Supreme Court, U.S.
FILED

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CIVIL CASE NO.

In The

Supreme Court of the United States

Nick A. Kolev, PhD, P.E.(In Pro Se)
Petitioner

v.

Tonya M. Prescott,SB#123530; Prescott&Prescott Law Firm
Respondent

Represented by: Laura M. Levy SB#216054

On Petition for Writ of Certiorari
California Court of Appeal 4th District, Div. 3 Case: G032337

PETITION FOR WRIT OF CERTIORARI

Nick A. Kolev, PhD, In Pro Se
10720 Lakewood Blvd. # 340
Downey, CA 90241
Ph:714-349-2207
Fax: 562-923-6518

I. QUESTIONS PRESENTED FOR REVIEW

Case presents for review JUDICIARY HONESTY, ETHICS, truthfulness of Kofy Annan assessment of US in UN-September 21, 2004:*"No one is above the law, and no one should be denied its protection. Every nation that proclaims the rule of law at home must respect it abroad; and every nation that insists on it abroad must enforce it at home"*

1/. JURISDICTION OF THE COURT, when Judge challenged (CCP §170.1;§170.6) viciously refuses to recuse himself, makes treats to "Pro Se", who fears, to show up in Court Room. Validity of Court decisions involving one party only.

2/. CLIENT-ATTORNEY ETHICS, involving File blockade to prevent malpractice lawsuit, **Local Rules of Court 3-700(D)(1) ; 5-220 ,ATTORNEY-ATTORNEY** loyalty and interests subject to disclosure.

3/. "PRO SE'S RIGHTS UNDER DUE PROCESS of State (Cal Const Art I, §15) and Federal (US Const Amendments I, V, XIV), when appellate court arbitrarily ignored legal issues involving mandatory rehearing on Jurisdictional and Procedural Questions under California Gov. Code §68081, because Jurisdiction decided this case.

"Pro Se" is pleading liberal Justices to back up "his right" of ***self representation***, proving it is real, just like the rights of minorities, religious groups, women first staged in Court , led to legislative changes later.

Petitioner is pleading conservative Justices to take out "Pro Se" ***self representation*** "paper right" because it is tramped equally by Attorneys and Justices and **ONLY LURE the Lay Man Litigants like Petitioner to spend time and money on JUSTICE RUSH in NEVER land.**

4/. FINANCIAL OBLIGATIONS OF "PRO SE", WHERE HE NEITHER SECURED JUDGMENT, NEITHER RECEIVED ANSWER TO HIS ALLEGATIONS. DECLARATORY RELIEF.

In court of Appeal "Pro Se's 200 points, authorities are unanswered, regarding attorney fraud and deceit, judge recusal, fair and due process. He understands that **he may not prevail**

even right, but lay man wants-legal answer-**NO ANSWER, NO PAY FOR FIAT VALUE COURT PROCEDURE.**

5./ US SUPREME COURT CONSOLIDATION OF SIMILAR STATE AND FEDERAL LAW CASES.

Petitioner has a fully briefed, waiting for decision in 9th Circuit Civil Rights Case No. 04-56137 involving Biven's Action-free right to marry, Malpractice of US Attorney .

Both cases involve "Pro Se 'Rights, Legal Malpractice, marriage, divorce. They are complimentary. Supreme Court Rule 14.2 is not particularly prohibitive to that.

6/. BAR SEGREGATION OF "PRO SE"IN COURT. STATE BAR ACT OF 1927. LAW GRAY AREA REGARDING SUCH CONSTITUTIONAL RIGHT.

The Constitutional "Pro Se" Right in Court Civil Matters , U.S.C. 28 §1654, is an elusive dream, carved in stone on the front of US Supreme Court "EQUAL JUSTICE UNDER LAW".

The petitioner, PhD Lay Man, fluent in 4 languages, took Legal Malpractice in Divorce, to realize after 3,5 years, 50,000 pages referenced, 600 pages filed:

If your are destitute of House and $120,000 by Attorney , the Judge, whose son is working for defendant is going to tell you *Every" Pro Se" has a fool for a client*" and if you keep arguing *you should be" locked up"*. The appellate Justice is going to side with his Judiciary buddies, not with the Jurisdictional law, proving it is wrong to have **Judiciary adjudged by judiciary**-neither State Bar, neither Commission on Judicial performance, neither your representatives would help you out where is **NO LAW FOR "PRO SE" AND JUDICIARY IMMUNITY FOR BAR BUDDIES.**

7/. AUTHORITY OF APPEAL JUSTICE TO PARDON LAW VIOLATIONS, AS "NEGATIVE LEGISLATOR".

The Appellate Justice pardon and granting jurisdiction to his former Superior Court buddy for covering up legal malpractice, holding files is coming to Hans Kelsen observation:"*The annulment of the law is Legislative function. A court which is competent to abolish laws functions as A NEGATIVE LEGISLATOR* General Theory of the Law and State, Cambridge, 1949, *p.268.*

II. LIST OF ALL PARTIES TO THE APPEAL PROCEEDING

CALIFORNIA COURT OF APPEAL, FORTH APPELIATE DISTRICT, DIVISION THREE (No. G032337)

On Appeal from the Superior Court of the County of Orange No- 02CC06912 The Honorable G.H.Lewis, Judge.

1. Nick A. Kolev, PhD, P.E.(In Pro Se) **Petitioner**
10720 Lakewood Blvd., Downey CA 90241
Phone: 714-349-2207; Fax: 923-6518

v.

2. Tonya E. Prescott,SB#123530;
Prescott&Prescott Law Firm **Respondent**
Represented by:
Laura M. Levy SB#216054, Dona M. Gilreath
HOLLINS&LEVY, LLP
23 801 CALABASAS RD, STE # 100
CALABASAS, CA 91302-1597
Phone: 818-223-0300; Fax: 818-223-0310

3. HONORABLE W.RYLAARSDAM-JUSTICE
COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE
925 N. SPURGEON ST, SANTA ANA, CA 92702

4. HONORABLE G. LEWIS, DEP. C-22
OC SUPERIOR COURT
700 CIVIC CENTER DRIVE-WEST
SANTA ANA, CA 92702

5. CALIFORNIA SUPREME COURT
CLERK'S OFFICE
300 SOUTH SPRING ST.
LOS ANGELES, CA 90013

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TABLE OF ABBREVIATIONS

O.P. -Petitioner Open Brief to Cal. Court of Appeal

R.P. - Petitioner Reply Brief to Cal. Court of Appeal

Ap.Ax - Petitioner Appendix in Court of Appeal

CCP- California Civil Code

P.Ax. - Petitioner Appendix to Writ Certiorari

C. Rp.Tr. - Court Reporter Transcripts Orange County

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Nick A. Kolev, PhD P.E.. Plaintiff and Petitioner. respectfully petitions for **WRIT of CERTIORARY** from unpublished decision of California Court of Appeal, June 09th, 2004. **(See P. Ax. 11) from Legal Malpractice Case disposed by OC Superior Court (See P. Ax. 19),**

Petition for Rehearing **(Cal. SC Rule 28(c)(2)**, under **Cal. Gov. Code §68081** disposed on June 29th, 2004, **(See P. Ax. 12),** Petition for **Review by California SC** under **(Cal. SC Rule 28(a)(1),** disposed on **Aug. 25th,2004 (See P. Ax. 12),.**

According to **US SC Rule 13.(1),** the Petition is timely if **within 90 days from Aug. 25th,2004 (See P. Ax. 14)**, mailed on November 23, 2004 and returned on December 07,2004 for 60 day correction.

JURISDICTION

US Supreme Court has original Jurisdiction under US Constitution Article III, § 2 to All Cases in Law and Equity.

The Justiciable Dispute involves validity of 28 U.S.C. § 1654 "In Pro Se" rights in all Courts, Fair and Due process under State **(Cal. Constitution Article I, §§ 7,15)** and Federal Law **(US Constitution Amendments I, V, XIV)** when Challenged Superior Court Justice G. Lewis ignores Petitioner Recuse pleadings and he is scared to show up in Court.

REASONS FOR GRANTING THIS PETITION

The Court's Authority is not based on specific enforcement arm. Impartial and equal implementation of the Law is essential in maintaining its authority, which would be strongly undermined when judiciary takes sides, expresses prejudice, mends the law for personal benefit, pardon friends and cronies.

1/. This case is about judiciary own moral, etical and legal standards. When the Law is traded as commodity across the BAR, when Attorney prepares Property Settlement Agreement as a Grocery List, when she trespasses 300 State Bar opinions, Court Rule 3-700(D)(1) mandating return of client files, and she calls the police to arrest his client, when Superior Court Judge

cooks Dismissal Order with back date, grace of Corrupt Court procedure asking Abusive Judge to file against himself, when Appellate Justice could not see any thing wrong with judge Gestapo tactics to one party, while his son is working for the other party, Petitioner believes Superior Court has full moral, ethical and public right to look at this case.

2/. Beyond Kolev and Prescott personal interest this case would clear the Pro Se right to challenge Superior Court Judge.

3/. Court of Appeal authority to make law in contempt of law deserves Supreme Court evaluation.

I. APPELLATE JUSTICE W. RYLAARSDAM FRIVOLOUS LEGAL OPINION-GODFATHER'S PARDON TO JUDICIAL CORRUPTION

A/.CORRUPT ENVIRONMENT-ORANGE COUNTY largest municipal bankruptcy in US history in 1994-over $30 billion and $200 billion collapse of Savings &Loans are claiming this County as a fraud capital of the nation not without help from corrupt judiciary.

B/. BAR SEGREGATION OF PRO SE -PRODUCT OF CORRUPT ENVIRONMENT-This shameful recidivism of slavery is a physical barrier established by prejudicial judges in OC to divide any pleading and argument coming from Bar buddies and cronies within INNER SIDE of the BAR on "OURS", and OUT of the BAR on LAYMAN worthless opinion regardless of LAW and FACT.

BAR SEGREGHATION is a protection of $50 billion State Legal Industry-197,600 Attorney strong, against AMATEUR encroachment under believe in Constitution and State Bar Act of 1927 Face value of PRO SE rights.

C/. STATEMENT OF THE CASE-Attorney T. Prescott, groomed for a judgeship, defrauds his client community interest in **$120,000 bank account and house now worth $700,000,** dumps him when confronted, with noble purpose TO HELP OUT Bar buddies firm **Bridgman &Assoc.** to avoid Mother immigration, IRS problem from commingled property with daughter.

In turn they would help her in **Judgeship** - Bruce Bridgman (SB 60660) former Deputy District Attorney, Vickie Bridgman (SB138225) current DA Office, defeated for Judgeship in last elections.

When things end up in OC Court because T. Prescott secretly filed Draft Property Agreement without Consent of her client, including unlawful provisions regarding exchange of retirement for nothing [Open Brief(O.P.) p.11]and unlawful added up additional child support for any additional expense[O.P.p.10] Confronted to set aside this agreement She dumps her client and refuses to return bank, house, tax files in violation of Rules of Court 3-700(D)(1).

When taken to Court, Attorney T. Prescott, is taking protective measures hiring the **LAW Firm of Hollins & Fields**- 100 miles away on the opposite side of Los Angeles, where Attorney M.Levy-just licensed- is good acquaintance of **Justice G. Lewis** son - **Attorney J. J. Lewis(SB216119)** working, for Hollins & Schehter in Orange - 500 yards from Attorney T. Prescott office. Here is another reason partner H. Fields worked as State Bar Judge and Arbitrator and allegedly was instrumental in covering up Complaint 02-8634.

D/. STATEMENT OF THE FACTS - MANIFESTATIONS OF BAR SEGREGATION

That **BAR Buddies** connection proved worth every penny of the effort to target the Justice G. Lewis family. Justice G Lewis is sincere in his advice to a **LAYMAN** on 12/16/02:" ***We have an adage in Court and the adage is who represents himself has a fool for a client"***.(P. Ax. 3, p.3)"***we can't expect everybody to understand unless you have been through law school and practiced law"*** (P. Ax. 3, p.3).**How true**-the **LAYMAN** does not have a fool for a client- **HE IS THE FOOL HIMSELF**. What Law School education PhD Layman needed to understand if your Attorney in divorce sides with Opposing Party on all issues and refuses to return you files to prevent malpractice law suit is a sinful act, actionable in Court.

When interest of his own son is at stake **J.J. Lewis**,- **Justice G. Lewis** - slams the rebellious **LAYMAN** with all the severity of **BAR SEGREGATION**:

1/. Stipulation for time extension is denied for no reason in the middle of the Holidays[O.B.p22,] [Ap.Ax.p.67,p.411]

2/. Pleadings of the poor **LAYMAN** for Amended Complaint **"of Course"** get lost in the Court - **that's right** the instant electronic system could not reach the judge for 5 days neither mail 3 pick ups[A.R.B.p.9]. This Amended Complaint never found, just trashed, according to "Fair and Due" "In Pro Se" process.

3/. Fed-Ex Mail for 5 days could not reach the Counsel for the opposite side[Ap.Ax.p.67,p.411]

4/. Opposition to the Demurrer based on Witkins *Pleadings & Practice* [Ap.Ax.p.67,p.50] saying (Prima Facie breach of Client-Attorney contract) is not objectionable by General Demurer, but Justice G. Lewis is so happy to accommodate the Law firm, where his son- Attorney J. J. Lewis is working;

5/. According to CCP§430.40(a). Motion for Demurrer is not valid after 30 days, but Justice G. Lewis is accommodating Hollins & Levy after 42 days and **BAR Buddies** Demurrer Although NOT VERY FRESH, STILL EATABLE;

6/. Justice G Lewis is asked on January 17th, 2003 to recuse himself for 4 reasons: **A/.**working together and socially acquainted with Bar Buddies Bruce Bridgman, Vickie Bridgman, Tonya Prescott; **B/.** Treat on December 16th 2002 to "lock up" **LAYMAN IN PRO SE**; **C/.**for loosing his papers and Ignoring Amended complaint; D/. having **BAR SEGREGATED PREJUDGED** opinion about the case;

7/. Challenged peremptory, and for cause Justice G.Lewis has had 3 options available to him **FOR 10 days ONLY**: A/. to recuse himself; B/. to strike it out; C/. to have a hearing

8/. Justice G.Lewis ruling on Demurrer is **BAR SEGREGATED OPINION**-throwing Judicial Notice, which is violation of the law, there is no hearing on the Demurrer, which is mandatory, there is no Right to Leave to Amend which is mandatory; Why such a stampede -10 days after Justice G. Lewis neither recused himself, neither stroke the challenge had no more power to rule on it than **any custodian in the court** and it is needed just to file motion of objection with the Court;All pertaining Laws well covered in Petitioner Open Brief (O.B. p. 15-30).

9/. M. Levy produced defective Notice for ruling on Demurrer. According to record the Notice was signed March 12th, 2003, but the file copy is stamped March 27th, 2003. Exactly 15 days which is the time limit according to CCP§659 Petitioner **lost his right for new retrial** based on this motion **before to have it[Ap.Ax.p.404]**

10/. Motions for Objection to trial from March 19th, 2003 **(See P. Ax. 5)** and April 1st, 2003 should be another authority to end the jurisdiction of Justice G. Lewis, who already did not have it after January 17th, 2003 challenge **(See P. Ax. 4).**

11/. When he was challenged another time again on April, 18th 2003 **(See P. Ax. 9) LAYMAN** found out the Justice G. Lewis **court room files are cooked**-they appear and disappear and they are stamped with any convenient date at will, the secretary would add papers 2 months later, produced God knows when. The Clerk of the Court even asked **LAYMAN** to resubmit his motion in order to make it defective by late filing.

12/. On this **Peremptory challenge-bias and prejudice**, for cause OC Superior Court implements corrupted procedure to save face and prevent surprises for **BAR Buddies** Justices challenged for relatives, conflict of interest. According to law CCP 170.3 Justice G. Lewis when CHALLENGED FOR CAUSE should not know who challenged him, but according to this OC Court corrupt procedure the only way to file a complaint against abusive Judge is to have Him filing it.[Ap.Ax.p.431,432] **YES, THAT'S RIGHT-THE ABUSIVE JUSTICE HIMSELF HAS TO FILE THE CHALLENGE AGAINST HIMSELF.** That gives the excellent opportunity for **Saber-Rattling Justice** like G. Lewis to give a piece of mind to rebellious Attorney **behind Court Stage,** or to **cook the files, which he did.** .[Ap.Ax.p.382,383]

13/. Suddenly the challenge is late because he dismissed on April 19th, 2003 the Case with back date of April 1st, 2003-no dismissal hearing, no Court Reporter, No notice, No Ex-Parte, no nothing.[Ap.Ax.p.382,383]

14/. When **LAYMAN** is complaining to **Presiding and Supervising** Justices in OC Superior Court they could not find any thing wrong, regardless of CCP 170.3 provisions. Apparently the corruption involving big bucks is so rampant,

than these Corrupt procedures are peanuts involving a **LAYMAN**, so they could not find any thing wrong and advise him to appeal. The ramification from this is Extraordinary Writ to Court of Appeal,-very detailed regarding-Peremptory Challenge, Challenge for Cause, WAS LATE BECAUSE Court of Appeal is NOT FACT FINDING COURT, and could not mistrust a COOKED WITH BACK DATE fraudulent Dismissal Order, although all the facts lay contrery to that assumption.

15/. Motion for new trial is submitted on May 09th, 2003-another good opportunity to challenge the corrupt Justice G. Lewis because the hearing is mandatory;

16/. Another time viciously elusive Justice G. Lewis **BAR SEGREGATED OPINION** is claiming the Motion is late-no reference to the law, all mandatory procedures scrapped[Ap.Ax.p.468], **(See P. Ax. 9)**

17/. In Appeal process OC Clerk Office stole $100 from poor LAYMAN, when he claimed literal readings allowing use for of these $100 unused for Court Reporter Transcripts, Clerk entered him in default;

In Court of Appeal **LAYMAN** produced **200 legal points** and authorities in **OPENING BREF** and **150 points** and authorities in **Reply Brief**-ALL OF THEM UNANSWERED, IGNORED !?!?!?!?!?!?

E/. W. RYLAARSDAM STANDING ON THE CASE

Court of appeal justice W. RYLAARSDAM is producing legal opinion which is totally missing the question about justice G. LEWIS son, regardless of detailed questioning by Justice R. FYBEL-member and chair of God knows how many committees on judicial ethics.

Based on bar segregated distortion of mind, consciousness, memory, law, honesty, court of appeal responsibility, justice W. RYLAARSDAM is producing **LEGAL OPINION**-soft to say **FRIVOLOUS, INACCURATE, UNLAWFUL**, based on bar segregation, never reading or considering LAYMAN PLEADINGS. he could not find any thing wrong in **BAR BUDDIES CORRUPTION , WHO CONSIDER LOSING A HOUSE, $120,000 ACCOUNT, DEFRAUDED OF ALL 40 BANK STATEMENTS NOT ONLY NOTHING WRONG**

WITH THAT, BUT THE PLEADINGS THEORETICALLY COULD NOT BE AMENDED TO REFLECT ANY WRONG DOING IN THE FUTURE? ! ? ! ? !

THIS IS THE ULTIMATE, ABSOLUTE AND UNCONDITIONAL GODFATHER PARDON TO THE JUDICIAL CORRUPTION IN ORANGE COUNTY.

No, there are not only Kings, Presidents and Governors to pardon. OC Appeal Justice W. Rylaarsdam could do it too? ! ? ! ? !

However this grate "Pardon" oddly enough is not certified for publication?!?!

II. ANTICONSTITUTIONAL, UNLAWFUL POSITION OF JUSTICE W. RYLAARSDAM LEGAL OPINION REGARDING JURISDICTION OF CHALLENGED JUDGE ON JAN 17, 2003 AFFECTING THE CASE OUTCOME.

A/. CONTEMPT OF LAWFUL PROCESS BY COURT OF APPEAL JUSTICE

Justice W. Rylaarsdam WILLFUL NEGLECT of HIS JUDICIAL SERVICE -A CONTEMPT OF LAW [Code Civ. Proc. § 1209(a)(3)];STRETCH TO COVER UP INTERESTS OF BAR BUDDIES IN OC COURT IS SIN PROCESS OF THE COURT - A CONTEMPT [CODE CIV. PROC. § 1209(a)(6)].

B/ JURISDICTION OF OC SUPERIOR COURT OVER THE CASE, AFTER JUSTICE G. LEWIS WAS CHALLENGED ON JANUARY 17TH, 2003

a/. COURT OF APPEAL MISTAKES AS A LEGAL PRECEDENT

A court of appeal opinion may incorrectly analyze or overlook a relevant rule of law or one of the party's arguments. ***See, e.g., Milo Equip. Corp. v Elsinore Valley Mun. Water Dist. (1988) 205 CA3d 1282, 1285, 253 CR 126***

The court may overlook an argument that, if accepted, could affect the outcome. See, *e.g.*, ***Freedom Newspapers, Inc. v Superior Court (1986) 186 CA3d 1102, 1106, 231 CR 189.***

b/. <u>JUSTICE W. RYLAARSDAM FRIVOLOUS OPINION- INCOMPETENCE AND FAILURE OF DUTIES ABOUT bread and butter OF LEGAL SYSTEM - THE JURISDICTION.</u>

.... The **request did not properly raise the issue for the court's consideration. Plaintiffs "statement" failed to describe any sort of relationship between the judge and the Bridgmans, much less one that would require the judge to disqualify himself.. Even assuming the court erred by doing nothing, plaintiff is not entitled to reversal because his "statement" alleged insufficient grounds for disqualification. (See *Unas v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 424.)**

c/. <u>"PRO SE" CHALLENGE OF UNCONSTITUTIONAL OPINION OF COURT OF APPEAL JUSTICE</u>

On January 17th, 2003 N.Kolev filed a signed statement for disqualification of Justice *G.Lewis Ap.Ax. Vol 2 at 216, at 217*]for 1/. His relations with Attn T. Prescott, Bridgman&Associates, **2/. prejudice** denying stipulated time extension and loosing his filed amended complaint, ex-parte communication with other side; GESTAPO tactics ***"to lock him up"*** 3/. prejudgment-every ***LAY MAN In Pro Se is a fool, "no success without legal education".*** 4/. request for camera, independent attorney. The disqualification would **further the interests of justice (CCP §170-l(a)(6)(A));** doubt about the **judge's capacity to be impartial existed** (CCP §170.1(a)(6)(B); (CCP §170.1(a)(6)(C))

The CCP permits a disqualification of a judge for prejudice upon a sworn statement, **without being required to establish it as a fact to the satisfaction of a judicial body**. ***Grant v. Superior Court (App. 6 Dist. 2001) 108 Cal.Rptr.2d 825, 90***

Cal.App.4th 518, if timely filled and in proper form, the trial court is bound to accept it without further inquiry.

If statement of disqualification is untimely or legally insufficient on its face, **judge must strike it from file within 10 day for filing consent or answer, and the judge can not simply ignore the statement, if judge does not strike statement and wants to contest his disqualifications, judge must file answer within 10 day period admitting or denying allegations in statement; if judge fails to do so, judge is deemed to have consented to disqualification and he is disqualified** See annotated CCP § 170.3(c) (2),(3),(4) ***Urias v. Harris Farms, Inc (App. 5 Dist. 1991) 285 Cal.Rptr. 659, 234 Cal.App. 3d 415.***

d/. JUSTICE W. RYLAARSDAM CAUGHT ON THE WRONG SIDE OF THE LAW REGARDING "SPECIFICITY", "CAUSE FOR INVESTIGATION" IN JUDGE RECUSAL

Justice W. Rylaarsdam is objecting this legal point stating the ignorance of Justice G. Lewis is **justified,** because the alleged disqualifying grounds are **deficient** ignoring prejudicial remarks [Ct.RtTr.12/16/02], denied timely stipulation[Ap.Ax.p.32-36], service of process, [Ap.Ax.p.206-207].

Absolutely bogus statement, because as we all see in this Court Soap Opera when the **alleged Judge son J. J. Lewis** was identified not only in 4 OC Superior Court motions, but in 2 Court of Appeal briefs and even at the Court of Appeal Oral Argument, that **BAR SEGREGATING WALL COULD NOT BE BROKEN BY ANY FACT, ANY DETAIL.**

Challenge of a judge is to be liberally construed in favor of allowing a peremptory challenge, and a challenge should be denied only if the statute absolutely forbids it. A peremptory disqualification request for a judge takes effect instantaneously and irrevocably ***(Justice W. Rylaarsdam does not know that, Does he?!)Davcon, Inc. v. Roberts & Morgan (App. 4 Dist. 2003) 2 Cal.Rptr.3d 782, 110 CalApp.4th 1355.***

Even if the language of statute regarding disqualification of judges were deemed ambiguous, the legislative history indicated that post-appeal peremptory challenges were

authorized *Pfeiffer Venice Properties v. Superior Court (App. 2 Dist 2003) 132 Cal.Rptr.2d 400, 107 CalApp.4th 761.*

If a peremptory challenge motion in proper form is timely filed under section allowing for disqualification of the judge for prejudice, the court must accept it without further inquiry. ***Stephens v. Superior Court (App. 4 Dist 2002) 116 Cal.Rptr.2d 616, 96 CalApp.4th 54.***

Trying to hurt LAY MAN you hurt the Dignity and Respect of Judiciary. **Let the LAY MAN give you Justice W. Rylaarsdam example from case which you cite without reading *Urias v. Harris Farms, Inc (App. 5 Dist. 1991) 285 Cal.Rptr. 659, 234 Cal.App. 3d 415.* at P. 425**

"We find no authority requiriing a party or his counsel to investigate to ascertain a judge's former clients. Rather, the responsibility lies with the judge ".

How **Justice Rylaarsdam would know that without hearing any explanations from Attorneys Bruce and Vicky Bridgman,** Defendant Attorney Prescott or Justice G. Lewis?!?!-both had or having cases with Justice G. Lewis presumably because of the size of their legal firm. **BAR Buddies Justice G.Lewis and B. Bridgman have been working together** as **Deputy DA**. The answer is simple - **BAR SEGREGATION - OUR BAR BUDDIES ARE NEVER WRONG, ISN'T IT.**

But Once Justice W. Rylaarsdam is taking the **Law Practice in NEVERLAND** his guess is as good as everybody's guess even when he is guessing the reasoning of his friend Justice G. Lewis (between 1989 and 1995 both Justices worked together as OC Superior Court Judges).

The reasoning of Justice Lewis to this Peremptory Challenge **was not deficiency**, because Petitioner asked him about it at Status Conference [Ct.Rt.Tr.02/03/03p.5] and Justice Lewis has said *that he is not aware of existence of such a paper 14 days after it was filed with a Court* (RT-02/03/2003) **The reason is BAR SEGREGATION which is holding the PLEADING papers as filter**. That's the reason Justice W. Rylaarsdam and **LAYMAN** knows it from the mouth of Justice G. Lewis he is **NOT MAKING A FRIVOLOUS GUESS LIKE YOU.**

This relationship b/w **BAR Buddies** Bridgmans and Justice G. Lewis is **NOT THE ONLY CHALLENGE** as you frivolously conclude Justice W. RYLAARSDAM WITHOUT READING THIS VERY SHORT PAPER. **(See P. Ax. 4)**

e/. JUSTICE W. RYLAARSDAM IS FAILING "PREJUDICE" AS CAUSE OF CHALLENGE TO JUSTICE G. LEWIS

Second question is a **Judge prejudice.** Justice G. Lewis **denied stipulated extension of time** of LAY PERSON needed to prepare answer in the Middle of Thanks Giving Holidays *Ap. Ax p.34. (cited in January 17th 2003 statement)* .

Also the **Third reason** is the **Judge G. Lewis GESTAPO TACTICS** on December 16th, 2002 **Judge G.H. Lewis** left his bench and jesting told the Petitioner: "*Anybody that chooses to harass, annoy, threaten, strike will be subject to the **contempt powers of the court, which means, being locked up.*** [cite] , Ct. Rep. Trsc. 12/16/02 at 4, Ln 19. Commenting about a subject outside of Court.

This prove of Ex-Parte communication between Justice G. Lewis-his son Attorney J.J. Lewis, and Counsel for Defendant - Attorney M. Levy about how **LAY MAN** got mad at the Fed. Ex delivery man, who neither delivered, neither called back and did not involve anybody from the case. So if you are scared for your life from a **saber-rattling Judge**, who is promising to " **lock you up" this is a DEFICIENT GROUND?!?!.**

Important addition to the Law in these terrorist times isn't it?

Give a LAY MAN a chance to Neil down or Neil up, whatever is more appropriate for Court of Appeal Justice W. Rylaarsdam knowledge standing through California Supreme Court and All the Way to **US Supreme Court** on Jurisdictional issues, on Constitutional Fair and Due process, on Safety in Court Rooms, on loyalty to Judicial principles. **Code of Civil Procedure 170.3(b)(2) There shall be no waiver of disqualification where the basis therefor is either of the following:(A) The judge has a personal bias or prejudice concerning a party.**

A judge who has a fixed opinion as to some characteristic of a party such that the Judge is prevented from deciding the case according to the evidence is disqualified Adoption of Richardson (1967) 251 Cal. App. 2d 222, 132. 59 Cal. Rpr, 323 (prior to hearing of adoption by deaf-mutes judge wrote to bureau director - adoption of normal child by deaf-mutes should be **"nipped in the bud".**

f/. JUSTICE W. RYLAARSDAM CAUGHT ON THE WRONG SIDE OF THE LAW REGARDING "MEDIA ACCESS AND SAFETY" AS MANDATORY WRITTEN CONSENT FROM JUDGE. ABUSE OF CONTEMPT POWER

Justice W. Rylaarsdam is ignoring as Justice G. Lewis did the **importance of media access in court room based on judge saber-ratling menace of contempt. Justice G. Lewis Refusing to answer this question regarding safety should be considered HIS abuse of DUE process or proceedings of the court and SHOULD constitute A CONTEMPT by itself [Code Civ. Proc. § 1209(a)(4)]. Cal. Rl. of Ct 960(e) is clear:** ***Media coverage shall be permitted only on written order of the judge*** **.**

It is impossible to protect yourself without contempting **Saber-Rattling Judge G. Lewis** because contempt in the understanding of Prejudicial Judge could be anything moving, not moving, sleeping, standing, saying, not saying, the way you say it

C/. LAY MAN STATEMENT ON JUDGE ELUSIVNESS, WHEN CHALLENGED AND UNANSWERED-CONTEMPT OF COURT PROCESS

Now even for a **LAY PERSON** is clear a Judge has to strike a challenge for recuse **because,** that would **avoid the guessing of his reasoning** and messing up the ultimate question IF THE JUDGE G. LEWIS FURTHER RULINGS after the 10th day ARE GOOD OR VOID according to the law. Otherwise **Why such a disrespect to the Process** by Justice G. Lewis misbehavior in office **IS NOT WILLFUL NEGLECT** or violation of HIS judicial service regarding the Safety of a party **-A CONTEMPT [Code Civ. Proc. § 1209(a)(3)**

To make the Embarrassment total Justice W. Rylaarsdam is **approving the ignorance** of Justice G. Lewis, but is giving a **Legal example the same Urias v. Harris Farms**, Inc, which is **disapproving the ignorance of a Judge** when challenged. **WHY SO, BECAUSE IT IS IMPOSSIBLE TO GIVE FRIVOLOUS LEGAL OPINION WHICH IS AGAINST THE LAW AND TO FIND EXAMPLE WHICH IS SUPPORTING IT.**

On p. 415 we read: *The Court of Appeal reversed the judgment and denied the petition. It held that, even if plaintiff's statement was untimely or legally insufficient,* ***Code. Civ. Proc., § 170.3, subd. (c)(4),*** *operated such that the judge's failure to respond constituted consent to the disqualification. It also held that the summary judgment was voidable, since it was granted by a disqualified judge who was timely and sufficiently challenged.* ***(Opinion by Thaxter, J., with Martin, Acting P. J., and Buckley, J., concurring.)***

III/. W. RYLAARSDAM CROOKED OPINION THAT FAILURE OF CONTRACT AGAINST CAL. RULE 3-700 AND DISTRUCTION OF EVIDENCE AGAINST CAL. RULE 5-220 - NO CAUSE OF ACTION IF DONE BY OUR BAR BUDDIES

a/. VIOLATION OF CALIFORNIA RULE OF COURT 3-700 (D)(1). VIOLATION OF CALIFORNIA RULE OF COURT 5-220 SUPRESSION OF EVIDENCE .

At the client's request, the Attorney, pursuant to Rule 3-700(D) (1) of the Rules of the Professional Conduct, MUST RELEASE TO THE CLIENT, all client papers and property which includes correspondence, pleadings, exhibits, deposition transcripts, physical evidence, expert reports, and other items reasonably necessary for the client's representation.

An Attorney's duty to give clients their files cannot be conditioned on payment or signing a substitution of Attorney form (6th cause of action in the Complaint) Ap. Ax. Vol 1 Ex 8 at 168 In *re Myrdall, 3 Cal State Bar Ct.* Rptr. 363, 377 (Review Dept. 1995).

The duty is not excused because the client has a copy of all documents in the file (the client is entitled to the originals*(In re Hanson, 2 Cal. State Bar Ct. Rptr. 703, 710 n.6* (Review Dept. (1994) (citing *Fridman v. State Bar*, 50 Cal 3d 235, 244 (1990) or because a client threatens mal practice action In re Lane, 2 Cal State Bar Ct. Rptr. 735, 748 (1994).

Code of Civil Procedure Section 2018 divides work product into two categories: conditional and absolute. The absolute work product reflects an attorney's impressions, conclusions, opinions, or legal research of theories. Conditional work product includes all other work product and can be discovered if the denial of discovery would unfairly prejudice in party in preparing its case or would result in an injustice. Code of Civ. Proc. § 2018 (b).

The Second District Court of Appeal, in the footnote opened that the Code of Civ. Proc. § 2018 (b) and Rule 3-700 (D) (1) were in most respects compatible with each other. *Metro-Goldwyn-Mayer*, 25 Cal App. 4th at 249.

The Amount of Publications about Client's absolute Right on Conditional Work Product and even his right to copy and inspect the absolute work product as ethical consideration, not just matter of Attorney right is so staggering than ANY OTHER OPINION HAS TO OVERCOME THIS VERY WELL ESTABLISHED TREND.

Client's right to work product Lasky. Haas. Cohler & Munter v. Superior Court (1985) 172 Cal.App.3d 264, 276-277 [218 Cal.Rptr. 205] Kallen v. Delug (1984) 157 Cal.App.3d 940. 950 [203 Cal.Rptr. 879] Weiss v. Marcus (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297] SD 1997-1

b/. JUSTICE W. RYLAARSDAM HELPING HIMSELF TO MESS UP WHAT IS DRAFT AGREEMENT, JUDGMENT AND CAUSE OF ACTION WHEN RULES OF COURT3-700 AND 5-220 TRESPASSED

In his opening statement about demurrer Justice W. Rylaarsdam is calling **Draft Agreement a Judgment.** Also further on analyzing why not returning the Original bank statements in violation of California **Rule of Court 3-**

700(D)(1) and definitely proving destruction of Evidence according to **Rule of Court 5-220, Justice W. Rylaarsdam frivolously concludes** there was no damage because the argument between **LAY PERSON** and representing him Attorney T. Prescott, groomed for a Judge, **occurred after Judgment.**

The Difference what could be done after Draft Agreement is filed but before Judgment is entered is **enormous** and is pointed out by **LAY MAN** (O.B. p.12)

*If the client is held to terms agreed to by counsel without authorization, the client has recourse against the attorney for acting in excess of authority. [In re **Marriage of Helsel** (1988,4th Dist) 198 Cal App 3d 332, 243 Cal Rptr 657]. **Marital settlement agreement, not into Judgment**, are voidable due to **fraud, duress, undue influence,** or **mistake. [CC §§** 1556 et seq.]; see Re **Marriage of Gomale's** (1976, 2nd Dist) 57 **Cal App 3d** 736, 129 **Cal Rptr** 566, or **inequitable,** even in **the absence of fraud** or compulsion. [Re **Marriage of Moore** (1980,4th **Dist)** 113 Cal **App** 3d 22, 169 **Cal Rptr 619].***

c/. VIOLATION OF CALIFORNIA RULE OF COURT 3-700 (A). (2) ***A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client,*** *allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.*

1. DUMPED CLIENT , DEPRIVED OF CRITICAL INFORMATION COULD NOT FIND ATTORNEY

On the top of Violation of Rule 3-700(d)(1) Attn T. Prescott cynically is claiming that the dumping of the client and ***defrauding him of his interest Bank Account $120,000, house in Irvine, unlawful child support, credit debt assigned to him only*** is not demonstrating *he suffered any damages of the substitution of attorney.* [R B p. 18]

I search for a new attorney Affiant realized: The new attorney would require retainer agreement money which Affiant did not have and would need a time to get familiar with the case. Particularly damaging were the missing WF statements

depriving Affiant of critical information-**How much money are at stake?**

The Attorneys are highly trained and highly paid professionals and they would not take a case where the amount in **controversy is unknown** or could be relatively small for legal malpractice case. That made it impossible to find an attorney well documented efforts citing large number of Attorney refusal (Ap. Ax pp. 336-353).

In SF-1990-1 Ethical Opinion: The attorney's ethical obligations with respect to a client arise generally as a result of the employment relationship. The issues presented here contemplate that the attorney-client relationship has been terminated either by withdrawal, discharge or conclusion of the representation. **An attorney's obligations to the client do not cease with termination of the employment relationship. Kallen v. Delug (1984) 157 Cal App. Sd 940, 950.**

2. DUMPED CLIENT , DEPRIVED OF CRITICAL INFORMATION COULD NOT STAGE EXACT DAMAGE AMOUNT AS PART OF "CASE WITHIN-CASE" BETTER TRIAL OUTCOME.

In the Status Conference statement January 30th, 2003 N. Kolev requested as necessary pretrial condition to try the undivided WF bank account, community property house in Irvine, undivided credit card debt, unknown child support amount as "case-within-a case". Stating that the division of these undivided assets would have produced a better result in the underlying case if the attorney had conformed to the standard of practice. Lysick v. Walcom (1968) 258 Cal. App. 2d 136, 153, 65 Cal. Rptr. 406; BAJI No. 6.37.5: but see Sukoff v. Lemkin (1988) 202 Cal- App. 3d 740. 745 n.4. 249 Cal Rptr. 42 (burden of proof may shift when necessary evidence is unavailable because of defendant's alleged fraud).

Once the trial of "case-within-a case" establishes the fair division of property the court would find the difference between its findings and the settlement agreement conditions as a measure of Attn.T.Prescott liability.

The plaintiff stated in 6 counts the elements of duty, breach, proximate cause and damages in the fraud and deceit action

against the attorney(Budd v. Nixen (1971) 6 Cal. 3d 195, 200, 98 Cal. Rptr. 849, 491 P.2d 433.

(Petition for Writ of Certiorari has a limited volume according to US SCourt Rl. 33), therefore allegations against respondent are included in Complaint to Commission on Judicial Performance against Appellate Justice W. Rylaarsdam:

1/. All 5 specificity requirements regarding Respondent Fraud and Deceit covered(See P. Ax.15 p. 2-5) ;

2/. Violations of Rules of Court, Business and Professional Code-attorney's responsibilities - please refer (P. Ax.15 p. 5-12);

3/. Additional allegations against Respondent, not even mentioned in Court of Appeal opinion (See P. Ax.15 p. 12-17)

To prove Attn. T. Prescott's fraud and deceit in the divorce division of property proximately caused damage to the N. Kolev, the plaintiff must essentially retry the underlying undivided issues to establish that he would have obtained a better result in the absence of the attorney's malpractice. Kessler v. Gray (1978) 77 Cal. App. 3d 284. 291, 143 CaL Rptr. 496. » Matico Forge. Inc. v. Arthur Young & Co. (1997) 52 Cal. App. 4th 820, 840, 60 Cal Rptr. 2d) 780 (accountant malpractice case) The evidence admissible in a trial of the "case-within-a-case" is the evidence that would have been admissible in the underlying action. Kessler v. Gray (1978) 77 Cal. App. 3d 284. 291, 143 Cal Rptr. 496.

IV. BAR SEGREGATION IN OC COURTS-SHAMEFUL RECIDIVISM OF SLAVERY SHATTERING CONSTITUTIONAL RIGHT OF SELF REPRESENTATION-STATE BAR ACT-REAL OR VOID.

A/. PETITION FOR REVIEW CERTIORARY DUE TO CONSTITUTIONAL VIOLATIONS

Obviously Petitioner's rights under the due process clauses of the State **(Cal Const Art I, §15)** and Federal **(US Const Amendments I, V, XIV)** constitutions are violated because appellate court arbitrarily ignored a significant legal issues involving mandatory rehearing on Jurisdictional and Procedural Questions that a litigant seeks to have reviewed as a matter of right, and that might entitle that party to relief

B/. TYPICAL FORMS OF BAR SEGREGATION IN OC COURTS AS CONSTITUTIONAL VIOLATION

a/. BAR SEGREGATION BY IGNORANCE OF ALL MOTIONS - For Extension Of Time, For Complaint Amendment, For Judicial Notice, For "Case With Case" Evaluations Of Additional Issues, Request For Camera Present In Court Room, Request For Trial Time Extension, Request For New Trial;

b/. BAR SEGREGATION BY IGNORANCE OF ALL PLEADINGS

-Including Opposition To Demurrer, Motions For Peremptory Challenge, Motion To Strike Pleadings After Justice G. Lewis Was Without Jurisdiction Of The Case, Motion For New Trial;

c/. BAR SEGREGATION BY BENDING THE LAW IN FAVOR OF BAR BUDDIES

-Challenged Without Jurisdiction Justice G. Lewis Ruling On The Case, Demurrer Accepted After 42 Days), Summary Judgment Accepted After Time, Cooking The Files Regarding Stamps, Time Of Filing, Keeping Files Not In The File Area For Extensive Period Which Is Messing The Consequence, Removing Papers From File, Accepting First Late Motions, Violating Mandatory Procedures For New Trial, Prejudicial Opinion For Plaintiff In Pro Se, Ruling In Secrecy Regarding Dismissal Of The Case, Secrecy In New Trial Ruling;

d/. BAR SEGREGATION BY ULTIMATE FINALLY OF ONE PARTY ONLY:

Nothing In The File Shows Justice G. Lewis Ever Red A Word Of Layman Pleadings; **(See P. Ax. 6)** Nothing In Bar

Buddies Hollins & Levy Shows They Ever Answered A Single Point Of Layman (Respondent's Brief, p.2-10); Nothing In Frivolous Opinion Of Justice W. Rylaarsdam Shows He Red Layman Pleadings**(See P. Ax. 5). SO FROM THE BEGINNING AND TO THE END IT WAS ONE PARTY PROCESS. PETITIONER IS ASKED TO PAY FOR CORRUPTION COVER UP, NOT FOR ANSWER OF HIS LEGAL QUESTIONS.**

C/. STATE BAR ACT OF 1927-THE VOID SHELL OF PERSONAL RIGHTS IN COURT."PRO SE" IN LEGAL SYSTEM

This Case is rising the question for the VERY EXISTANCE OF THE STATE BAR ACT OF 1927-Operating Law of an Army of 197,600 Attorneys, $50 billion strong Legal Industry. The Act guaranteed the Rights of growing and competing community of Attorneys: **NO LEGAL ADVISING WITHOUT HIRING. So even for a small 5 minutes inquiry you have to hire an Attorney and pay retainer.**

a/. STATE BAR ACT BIGOTRY

To pacify the Public at large The Act included CONSTITUTIONAL SELF REPRESENTATION, according to 28 U.S.C. §1654 That was and still a half measure. Look at the bigotry of the State Bar Act § 6401.5. Practice of law by nonlawyers ***Nothing in this chapter shall be construed to sanction, authorize, or encourage the practice of law by nonlawyers.***

State Bar Act § 6125 Practice of Law by Non attorney's, non Bar members is unlawful; State Bar Act § 6126 Practice of Law by Non attorney's, non Bar members is misdemeanor; §6127. Contempt of Court ***(a) Assuming to be an officer or attorney of a court and acting as such, without membership.(b) Advertising or holding oneself out as practicing or as entitled to practice law or otherwise practicing law in any court, without being an active member of the State Bar*** **in accordance with the**

provisions of Title V of Part III of the Code of Civil Procedure. §§281, 1209.)

b/. "PRO SE" IS ALWAYS A PRO BONO WORK

"Pro Se" is not entitled to any compensation or recovery in Court Procedure, even if he is an Attorney.

Attorney fees may not be awarded under Civil Code §1717 to a prevailing attorney **acting in pro se** ***Farmers Insurance Exchange v. Law Offices of Conrado Joe Savas. Jr. (9th Cir. 2001)[250 F.3d 1234***

Attorney fees may not be awarded under 42 U.S.C section ; 1988 to a **pro se litigant** *Kay v. Ehrier (1991) 499 U.S. 432 [111 S.Ct. 1435]*

Attorney may recover only costs after successful discovery motion Kravitz v. Superior Court (Milner) (2001) 91 Cal.App.4th 1015 [111 Cal.Rptr.2d 385]

c/. 'PRO SE' ALTHOUGH FUNDAMENTAL IS UNPROTECTED AND COULD BE TAKEN AWAY.

The person "Pro Se" is openly discriminated, abused in Court of Law by the Judicial Officers, because he is stilling their bread, because there is NO LAW to protect him.

He the Amateur, the LAYMAN is left on the Mercy of Professional Sharks.

Imagine we say to minorities, disabled, elderly, women: "Rise and Shine", you are equal under the Constitution to every body else, more Civil Rights Acts are just waste of Time and money.

We don't need laws **LIKE THE ONE** to back up **civil-rights matters** (42 U.S.C.A. §§ 3611, 3612; 24 C.F.R. Part 180); **civil-rights suits**, generally, (28 U.S.C.A. §§ 1343, 1391, 1443, 2201, 2283; 42 U.S.C.A. § 1988; Fed. R. Civ. P. 8, 12, 23, 24, 56); **suits under the Reconstruction-era civil-rights acts** (42 U.S.C.A. §§ 1981 to 1986); **proceedings under public education civil-rights laws** (20 U.S.C.A. §§ 1654, 1655, 1681 to 1683, 1687, 1706, 1708 to 1718, 1753 to 1758;

Right of self-representation, although fundamental is not absolute, subject to judiciary discretion and may be limited

or waived if not raised before trial; after trial is begun, grant or denial of **the right to proceed pro se rests within the sound discretion of the trial court.** ***U.S. v. Lawrence, C.A.4 (S.C.) 1979, 605 F.2d 1321, certiorari denied 100 S.Ct. 1041, 444 U.S. 1084, 62 L.Ed.2d 770.***

Accused does not have an absolute right to change attorneys during course of trial. Sanchez v. U.S., C.A.9 (Cal.) 1962, 311 F.2d 327, certiorari denied 83 S.Ct. 1678, 373 U.S. 949, 10 L.Ed.2d 704.

Right to defend pro se, whether constitutional or merely statutory, is not absolute but is qualified and may be denied under some circumstances. ***U.S. v. Davis, D.C.Tenn.1966, 260 F.Supp. 1009.***

An accused does not have an absolute right to dismiss his lawyer and make his own summation, but matter is in trial court's discretion. ***U.S. v. Foster, D.C.N.Y.1949, 9 F.R.D. 367.***

d/. JUDICIARY IS SHIELDED AGAINS LIABILITY IN ABUSING 'PRO SE' RIGHTS.

What is the punishment of judicial officers if they discriminate you as "pro se" in court - nothing.

You could not take abusive court to court of law, could you?!?!?!

Rule that judges of courts of superior or general authority are absolutely privileged as respects civil suits to recover damages for action taken by them in exercise of their judicial functions is available as an absolute defense in actions brought under 28 U.S.C. §1343, even if much confinement complained of by plaintiff have been legitimately in violation of constitutional rights. ***John v. Gibson, C.A. 9 (Cal.) 1959, 270 F.2d 36, certiorari denied 80 S.Ct. 601, 361 U.S. 970, 4 L.Ed.2d 549.***

Judges enjoy absolute immunity from 42 U.S.C. § 1983 damage liability. The question first came before the Supreme Court in ***Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967).***

The Court found that at common law judges enjoyed absolute immunity, a position that was adopted by the Court ***in Bradley***

v. Fisher, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872). The Court concluded that this "settled principle of law" was not abolished by **42 U.S.C. § 1983**, as Congress "would have specifically so provided had it wished to abolish the doctrine."

The Court has consistently upheld absolute immunity for judges performing judicial acts. **even when those acts violate clearly established judicial procedures.** *Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).*, the Court held that an Indiana state judge, who ordered the sterilization of a female minor without observing due process, could not be sued for damages.

The judge approved and signed the petition authoring the sterilization, but the petition had not been filed with the court clerk and the judge had not opened a formal case file. The judge failed to appoint a guardian ad litem for the minor and did not hold a hearing on the matter. Nevertheless, the Supreme Court ruled that Sparkman was absolutely immune because what he did was "a function normally performed by a judge," and he performed the act in his "judicial capacity." ***Although he may have violated state laws and procedures, he performed judicial functions that have historically been absolutely immune to civil lawsuits.***

In our particular case why Judge G. Lewis would not hit the audacious Lay Man filing against his friends, when his son-Attorney J. J. Lewis interest, being probably in probation at the filing of the case, as an young attorney with Hollins & Schechter was at stake.

Though the Court recognized absolute judicial immunity, when the judge's action is outside his or her "judicial capacity," immunity may be defeated." In addition, when the act is judicial in nature but it is "taken in complete absence of jurisdiction," judicial immunity is lost *Mireles v. Waco, 502 U.S. 9. 112 S.Ct. 286, 116 L.Ed.2d 9 (1991), on remand 962 F.2d 865 (9thCir.1992).*

e/. ABUSE OF "PRO SE" IN THIS CASE

In our particular case why Justice W. Rylaarsdam will overrule his friend of many years in OC Superior Court Judge G. Lewis - one Christian Fundamentalist, the other

Conservative Republican while supporting him, no matter what, would carry "zero" liability.

The Only option left is to file and to refile, to appeal, to make motions which nobody wants to hear, to complain from Bar Justices to Bar Justices and finally you run out of time, money, thrust in this BAR SEGREGATED System and You give Up. This Lay Man will Not without making this case public.

Grace of BAR SEGREGATION principle My CONSTITUTIONAL RIGHT to FAIR and DUE PROCESS was violated by Attorney T. Prescott, who is groomed for a JUDGE, and who committed PRIMA FACIE 7 counts of Fraud and Deceit, by Attorney L. Levy who viciously refused to consider and answer legal points and authorities, BECAUSE the who has to decide case Justice G. Lewis, who committed every possible and impossible violation of Judicial Cannons is under the same BAR SEGREGATING principle, BECAUSE his son J.J. Lewis is working with defense counsel L. Levy.

When reaching Court of Appeal Justice R. Fybel member of many Committees on Judicial Ethics after a number of questions showing the J. J. Lewis was identified by First, Last name and age, and place of work and the information is coming from a public record by BAR SEGREGATION principle DID NOT FIND *EVEN NEEDED TO CLEAR* THIS FUNDAMENTAL QUESTION ABOUT FAIRNESS, **Justice W. Rylaarsdam produced a FRIVOULUS ILLEGAL OPINION without reading the briefs and that FRIVOULUS ILLEGAL OPINION are NOT SUPPOSED TO BE PUBLISHED.**

V. DECLARATION FOR DECLARATORY RELIEF. VALIDITY OF JUDGMENT IN "UNFAIR AND DUE' PROCESS Title 28 U.S.C.,§ 2201 :

1. On August 25th, 2004 California Supreme Court denied Petition for Review (En Banc) and therefore Plaintiff exhausted all State Court System OPTIONS for relief

WITHOUT COURT TRIAL OF 200 POINTS AND AUTHORITIES submitted in his Opening Brief on Appeal.

2. N. Kolev stated in his Petition for Rehearing in Court of Appeal from June 23d,2004 and AGAIN in his Petition for Review in California Supreme Court from July 19th, 2004: Justice W.Rylaarsdam frivolous legal opinion from June 09th, 2004 is a Godfather's pardon to judicial corruption in Orange County and his ignorance to 200 Legal Points and Authorities in Open Brief and 150 in Reply brief -all unanswered by Defendant -violates Petitioner's rights under the due process clauses of the State Constitution Article I, §7(a) *A person may not be deprived of life, liberty, or property without due process of law* and US Constitution XIV Amendment: *No State shall deprive any person of life, liberty or property without due process of law* (House on Gainesmill 15, Irvine, CA 92620, Wells Fargo Bank Account No. 6488-085465 for $120,000; case files).

3. Jurisdictional and Procedural Questions under Gov. Code §68081 requiring mandatory rehearing regarding the rulings of Justice Lewis without jurisdiction, vicious refusal of Defendant to return N. Kolev bank statements and files in Prima Facie violation of Rules of Court 3-700 (D) (1) were ignored too by Court of Appeal.

4. In Kolev v. Prescott neither Superior Court, neither Court of Appeal satisfied the letter and Spirit of California Constitution Article VI, §14 ignoring all legal issues and making a mockery of Kolev's right to IN PRO SE presentation, justifying his relief again any judgment for the following reason:

A/. **The court must have appropriate jurisdiction** before it can adjudicate. *Scott u. McNeal,* 154 U.S. 34, 14 S. Ct. 1108, 38 L. Ed. 896 (1894); *Harrington u. Superior Court of State of California, Inand For Placer County,* 194 Cal. 185, 228 P. 15 (1924). *In re Marriage of Flaherty,* 31 Cal. 3d 637, 183 Cal. Rptr. 508, 646 P.2d 179 (1982). BUT OC SUPERIOR COURT

DID NOT BECAUSE JUSTICE LEWIS WAS CHALLENGED UNDER CCP §170.1 AND 170.6 AND HE IGNORED IT;

B/. The most basic due process consideration is that a Thus, a **court of law acts in violation of the Due Process Clauses** if it proceeds to adjudicate rights without notice to the parties and an **opportunity to be heard**. *Twining v. State of N.J,,* 211 U.S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908) (overruled in part by, Malloy v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964)); *In re Marriage ofFlaherty,* 31 Cal. 3d 637, 183 Cal. Rptr. 508, 646 P.2d 179 (1982); *Randone u. Appellate Department,* 5 Cal. 3d 536, 96 Cal. Rptr. 709, 488 P.2d 13 (1971). How N.Kolev had the opportunity to be heard when Justice Lewis menaced him to "lock him up" and he could not show up in court;

C/. There must be a fair hearing. **This includes the right to produce evidence** and cross-examine witnesses *(Fewel v. Fewel,* 23 Cal. 2d 431, 144 P.2d 592 (1943)), as well as the right to be represented by counsel *(Mendoza v. Small Claims Court of Los Angeles Judicial Dist,* 49 Cal. 2d 668, 321 P.2d 9 (1958)).

Justice Lewis is accepting demurrer after 42 days, refusing mandatory "case within a case" trial of house and bank account, refusing judicial notice for violations of court rules, denying right of hearing and to amend; T Prescott holding critical information deprived N.Kolev from Counsel.

D/. In addition, **there must be an impartial judge** *(Tumey v. State of Ohio,* 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio L. Abs. 159, 5 Ohio L. Abs. 185, 50 A.L.R. 1243 (1927)), How impartial is Justice Lewis having his son Jay Lewis working for defendant counsel Hollins & Schechter.

E/. In **Legal Malpractice case must be a trial by jury** MANDATORY ***Piscitelli v. Friedenberg (2001) 87 Cal.App.4th 953 [105 Cal.Rptr.2d 88].*** Justice Lewis did not allow it, although it was requested.

F/. In order to be entitled to costs and fees under CC §1772 the party has to prevail, but how defendant is prevailing where is **no trial on the issues, but ignorance by court.**

5. N. Kolev is looking for relief in US Supreme Court under the following statutes:

A/. Title 42 U.S.C.§ 1981(All persons entitled to full and equal benefits of all laws and proceedings-Here discrimination of IN PRO SE litigant);

B/. Title 42 U.S.C.§ 1983 (Depravation UNDER THE COLOR OF STATE LAW of Rights, Privileges, Immunities secured by US Constitution)

C/. Title 42 U.S.C.§ 1985(3) Conspiracy to deprive a person of rights or privileges)

D/. Title 42 U.S.C.§ 1986(Action for neglect to prevent).

6. US Supreme Court has jurisdiction to entertain Petition for protected right to SELF REPRESENTATION (In Pro Se) under Civil Rights Act of 1871, Title 28 U.S.C., §1331(a) Federal Question regarding Justice Lewis ruling without jurisdiction and Title 28 U.S.C., § 1343(1),(2) Depravation of Civil Rights with class based animus discrimination regarding Pro Se litigant.

7. If OC Superior Court fails to stay enforcement of Judgment under review N. Kolev may present to US Supreme Court Justice AN APPLICATION TO STAY THE ENFORCMENT OF THAT JUDGMENT UNDER Title 28 U.S.C..§2101(f).

8. Declaratory Judgment for Protection of Right of Self Representation and Fair and Due Process is available to N. Kolev under Title 28 U.S.C.,§ 2201 regardless whether or not further relief is or could be sought. Any such declaration shell have the force and effect of a final judgment or decree and shell be reviewable as a such.

VI. CONCLUSION

1/. **Defrauded of house, bank account for $120,000, files not returned for 3 years** and the Orange County Court System rotten by BAR SEGREGATION from the bottom and to the top **could not find any thing wrong with viciously prejudicial Judge and his son working for Defense Counsel.**

2/. **Supreme Court has the power to impose a higher standard of conduct on attorneys than that applicable to other professionals [Howard v. Babcock (1993) 6 Cal. 4th 409, 418, 25 Cal. Rptr. 2d 80, 863 P.2d 150].**

3/. Appellate Justice changing the Law to accommodate friends goes beyond Kolev and Prescott to the very beginning of Courts, before Justinian had codified Roman Law, to **Augustine original wisdom: Once Laws are established and sanctioned *judges must not be allowed to judge them: they are to judge according to them* De Vera Religione XXXI, p.58.**

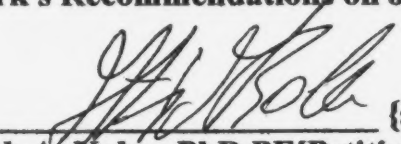
4/. If the law is not bounding for judicial officers and they violate pro se right to self representation under judicial immunity, what is the moral and ethical ground to bound pro se by their decision?!?!

Either pro se "right" should be abolished, either should be enforced. **No citizen needs fiat constitutional right to represent himself when that representation excludes NOT ONLY the right to succeed., but even the right to answer.**

5/. Granting Writ Certiorari would prove **No body is above the law and Pro Se rights** are respected.

I declare under penalty and perjury under the laws of the State of California AND ACCORDING TO U.S.C. Title 28 § 1746 that the foregoing is true and correct .

Dated this Tuesday, November 23d, 2004 and modified per Clerk's Recommendations on January 19th, 2005



{signature}

Nick A. Kolev PhD PE[Petitioner In Pro Se]

CIVIL CASE NO.

In Th:

Supreme Court of the United States

Nick A. Kolev, PhD, P.E.(In Pro Se)

v. *Petitioner*

Prescott&Prescott Law Firm

Respondent

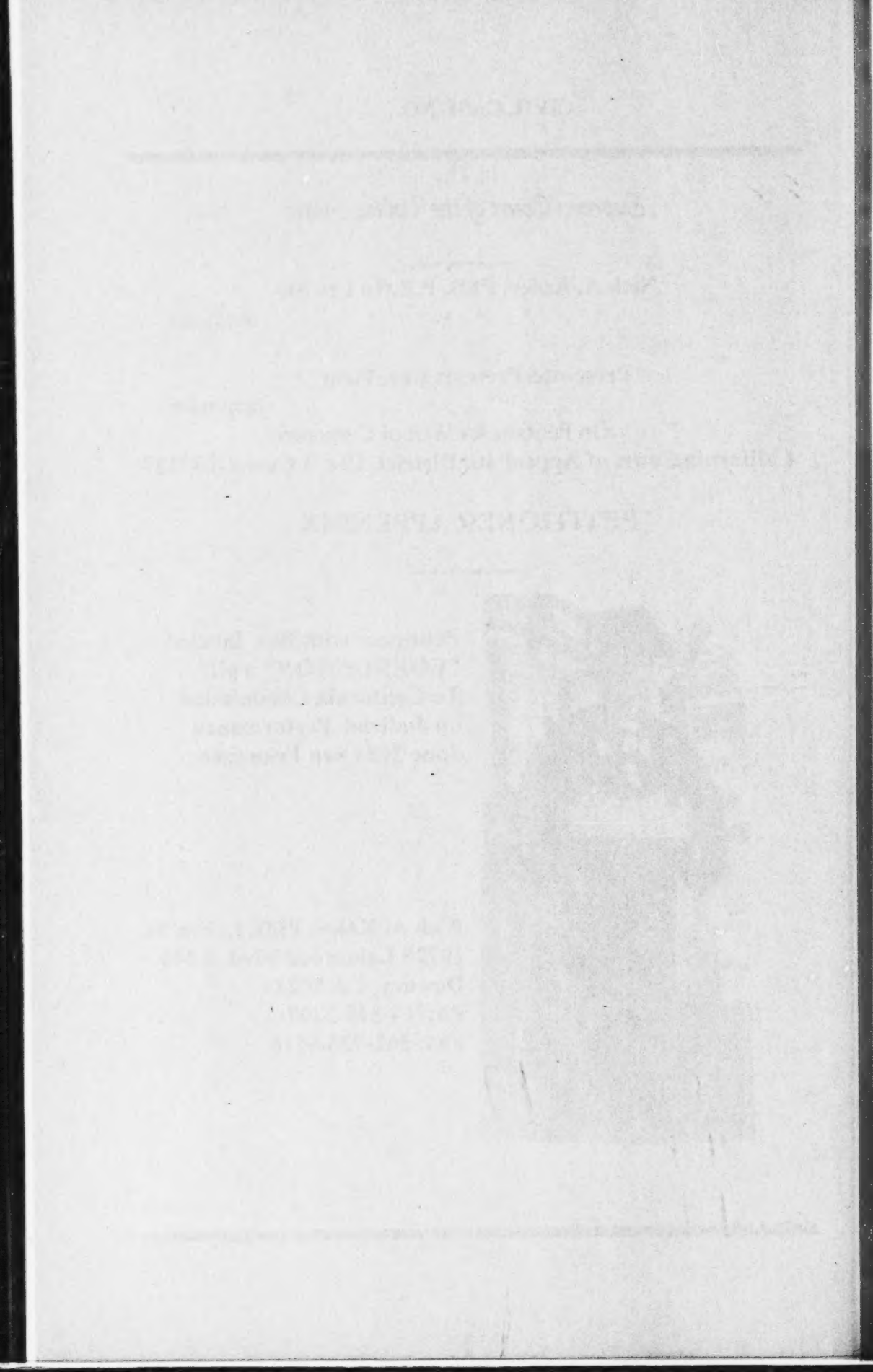
On Petition for Writ of Certiorari

California Court of Appeal 4th District, Div. 3 Case:G032337

PETITIONER APPENDIX

Petitioner with Box labeled "CORRUPTION" a gift To California Commission on Judicial Performance June 2004 San Francisco

Nick A. Kolev, PhD, In Pro Se
10720 Lakewood Blvd. # 340
Downey, CA 90241
Ph:714-349-2207
Fax: 562-923-6518



PETITIONER APPENDIX

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1. COMMUNITY PROPERTY HOUSE IN IRVINE THAT WAS COVERED UP BY RESPONDENT -NOW DOUBLE IN PRICE

ORANGE COUNTY SECURED (2002-2003) ROLL
WEBSTER J. GILROY, ASSESSOR

PARCEL NO.52935211 TRA:26177
PROPERTY TYPE:1 BK_PG:52935
OWNER MAILING ADDRESS/

OWNER: LIFANOVA-KOLEV, GALINA E
VESTING:UW
ADDRESS: 15 GAINSMILL
CITY ST: IRVINE CA
(NUM) ZIP+4:92620
ALPHAZIP+4:37066

SITUS ADDRESS/DESCRIPTION/ACRES

STREET:15 GAINESMILL

CITY:IR IRVINE
ASSESSEDVAL EXEMPTIONS CODES DATES OTHER

LAND:211085 EXE AMT1: 7000 EXEL:7 BASE L:2002
NO LVAL:
IMPR: 138915 EXE AMT2: BASE I:2002
PP: DFLT DT:
OTHER
GROSS 350000
NET: 343000

SALE HISTORY
REC NUM: R01711597

ADDITIONAL INFORMATION

ACRES:

LEGAL: N TR 12307 LOT 39

END OF RECORD

2. COMMINGLED ACCOUNT, COVERED UP IN PROPERTY AGREEMENT BY DEFENDANT

WELLS FARGO BANK
P.O. BOX 7035
SAN FRANCISCO. CA 94120-9635

WELLS FARGO

lil....Llllul.|.ii.|ill.||i.||....|.|il.|..lil.llln.llil
GALINA LIFANOVA KOLEV

Page lot 5

28056 MARGARITE PARKWAY E
MISSION VIEJO. CA 92692-3625

Introducing Wells Fargo Funds.

Wells Fargo Funds offer a broad array of Investment choices and diversification opportunities for you - 6l funds, this nine annuity funds. With over $57 billion in mutual fund assets under management (as of 10/31/99), the new und family is one of the largest In the nation. See the enclosed brochure for more Information and disclosures.

This statement covers 12/01/99 through 12/31/99

Summary of Accounts **Wells Portfolio #10409592**	**Beginning Balance**	**Ending Balance**
Checking 0799-258702(FDS Insured)	3,295.41	1,888.73
Wells Extra Savings 6799-679683	0.17	0.17
Money Market Access 6488-085465	96,854.76	119,032.21
Liquid Portfolio Totals	**100,150.34**	**120,921.11**
Wells Portfolio Assets Total	**100,150.34**	**120,921.11**

3. ORAL ARGUMENT ON 12/16/02, WHEN BIAS, PREJUDICE AND ABUSE OF DISCRETION OF JUSTICE G.LEWIS PROVOKED HIS PEREMPTORY CHALLENGE

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C-22

NICK A. KOLEV,	)
Plaintiff,	) **Case No.: 02CC06912 ;**
vs.	) **Hon. Gregory H. Lewis,**
TONYA M. PRESCOTT.ESQ. SB#123530,	)
PRESCOTT & PRESCOTT, Law Firm	)
Defendants	)

SANTA ANA, CALIFORNIA - MONDAY, DECEMBER 16, 2002 MORNING SESSION

THE HONORABLE GREGORY H. LEWIS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS DECEMBER 16, 2002

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF: NICK A. KOLEV, IN PRO PER

FOR THE DEFENDANT: HOLLINS & FIELDS, LLP BY: LAURA M. LEVY, ATTORNEY AT LAW

KIM J. REITAN, RPR, CSR #8450 COURT REPORTER PRO TEMPORE

.*.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT)

THE COURT: KOLEV VERSUS PRESCOTT.

MR. LEVY: LAURA LEVY FOR THE DEFENDANT PRESCOTT.

THE COURT: WHAT WAS THE NAME?

MR. LEVY: LAURA LEVY.

MR. KOLEV: GOOD MORNING, YOUR HONOR. NICK KOLEV, THE PLAINTIFF.

THE COURT: YOU REQUESTED ARGUMENT ON THIS. IF YOU WISH TO BE HEARD.

MR. KOLEV: YES, YOUR HONOR. I FEEL PRIVILEGED BECAUSE I UNDERSTAND THE ORAL ARGUMENT IS A PRIVILEGE, AND I APPRECIATE IT.

THERE ARE A FEW ISSUES WHICH ARE SUPPOSED TO BE CLEARED ON THIS ARGUMENT. MAY I USE MY NOTES?

MR. COURT: OF COURSE, GO RIGHT AHEAD.

MR. KOLEV: I AM LOOKING FOR THE FOLLOWING AGENDA. FIRST, THE AMENDED COMPLAINT, OF COURSE, FILED DECEMBER 6TH BECAUSE THE AMENDED COMPLAINT IS THE PARAMOUNT TO ANY OTHER ISSUE.

THE COURT: PARAMOUNT TO WHAT?

MR. KOLEV: ANY OTHER ISSUE OR MOTION ISSUES FROM DECEMBER 11TH?

THE COURT: MR. KOLEV, HAVE YOU READ THE TENTATIVE OF THE COURT? THIS IS A DEMURRER TO THE COMPLAINT.

MR. KOLEV: YES, YOUR HONOR, I DID.

THE COURT: THERE IS A MOTION TO STRIKE THE DEMURRER FILED. I HAVE NOT SEEN THAT BEFORE. THERE WAS NO PROOF OF SERVICE.

MR. KOLEV: I ELABORATE, YOUR HONOR.

THE COURT: LET'S STAY WITH WHERE WE ARE.

WE'RE TALKING ABOUT A DEMURRER, AND WE'LL TALK ABOUT A MOTION TO STRIKE IN A LITTLE BIT, BUT RIGHT NOW, LET'S TALK ABOUT THE DEMURRER.

WHAT DO YOU HAVE THAT YOU WISH TO ARGUE ON THE COURT'S RULING?

MR. KOLEV: I BELIEVE, YOUR HONOR, THE DEMURRER SHOULD BE OVERRULED ON THE GROUND, I HAVE AT LEAST FIVE CAUSES OF ACTION INVOLVING FRAUD AND DECEIT. THE COURT: I'VE READ YOUR PAPERS.

NOW THE RULING OF THE COURT IS THAT THE DEMURRER IS SUSTAINED WITH 20 DAYS LEAVE TO AMEND. IF AMENDED —

WE HAD SOME PROBLEMS WITH YOUR PAPERS. YOU ARE NOT A LICENSED LAWYER; IS THAT CORRECT?

MR. KOLEV: YES, YOUR HONOR, I AM JUST THE PLAINTIFF.

THE COURT: WELL, JUST A PLAINTIFF, BUT IN THE MATTER OF AN ACTION FILED WITH THE SUPERIOR COURT, THE LIKE OF WHICH IS FILED NOW, YOU MUST ATTEND TO THE RULES WHICH ARE SET FORTH, AND THE RULES ARE SET FORTH IN CALIFORNIA RULES OF COURT, THE SOUTHERN CALIFORNIA LOCAL RULES AND MULTIPLE VOLUMES OF THE CODE.

YOU HAVE THE RIGHT TO REPRESENT YOURSELF, MR. KOLEV, AND I WANT TO MAKE THAT VERY CLEAR. IT IS A CONSTITUTIONAL RIGHT TO REPRESENT YOURSELF, BUT ***IN THE LAW WE HAVE AN ADAGE, AND THE ADAGE IS THAT HE WHO REPRESENTS HIMSELF HAS A FOOL FOR A CLIENT***.

YOU ARE TOO EMOTIONALLY INVOLVED. YOU DON'T USUALLY KNOW WHAT THE STATUS IS OF THE LAW AND MOTION PRACTICES, PRESENTING EVIDENCE OR MAKING OBJECTIONS, IF COUNTERING OBJECTIONS ARE MADE, SEATING A JURY AND HANDLING DISCOVERY. AND I SENSED WHEN READING YOUR PAPERS THAT YOU ARE A VERY, VERY BRIGHT MAN. NO QUESTION ABOUT IT THAT YOU ARE A VERY BRIGHT MAN, BUT YOU ARE SADLY FAILING WITH AN UNDERSTANDING OF HOW THE LAW WORKS, AND THIS IS TO YOUR DETRIMENT, BUT ***WE CAN'T EXPECT EVERYBODY TO UNDERSTAND UNLESS YOU HAVE BEEN THROUGH LAW SCHOOL AND PRACTICED LAW***, AND THEN WE CAN EXPECT YOU TO UNDERSTAND, BUT WE HAVE TO PLAY BY THE SAME RULES.

I CAN'T GIVE YOU ANY GREATER FAVOR BECAUSE YOU ARE WITHOUT A LAW DEGREE OR KNOWLEDGE ON HOW TO PROSECUTE A CASE. I CANNOT GIVE YOU ANY GREATER NOR LESSER. SAME WITH HER, I CAN'T GIVE HER ANYMORE THAN I CAN GIVE YOU, BUT I

CAN'T HELP YOU.

YOUR PAPERS ARE SADLY REMISS IN FOLLOWING THE RULES OF COURT. THEY ARE SADLY REMISS IN NOT KNOWING WHAT YOU ARE DOING, AND YOU ARE GOING TO SUFFER AS A RESULT OF THAT.

ALL OF THAT IS SAID TO YOU SO YOU MIGHT ENGAGE THE SERVICES OF AN ATTORNEY TO ASSIST YOU IN THE PROSECUTION OF YOUR CASE. IF YOU CHOOSE TO DO IT, FINE; IF YOU DON'T CHOOSE TO DO IT, FINE TOO. THAT'S YOUR OWN BUSINESS, BUT

I'VE TOLD YOU AND YOU MIGHT WANT TO TAKE THOSE WORDS TO HEART.

MR. KOLEV: I UNDERSTAND THE SERIOUSNESS OF THE SITUATION, BUT IT WAS VERY SHORT NOTICE.

THE COURT: IT IS APPROPRIATE NOTICE UNDER THE LAW. UNDER THESE CODES, IT IS APPROPRIATE NOTICE

THAT YOU'VE RECEIVED, BUT YOUR FILINGS ARE NOT TABBED. THEY ARE NOT TO THE FORM THAT IS GENERALLY ACCEPTABLE IN THE LAW.

MR. KOLEV: I MEANT SOMETHING ELSE, YOUR HONOR.

REGARDING ***THE DENIAL TO EXTEND THE TIME, IT WAS BASED ON NO SIGNATURE IN THE STIPULATION, AND IN THE SECOND PAGE IT WAS A SIGNATURE*** FOR THE STIPULATION, SO I FELT LIKE MISFORTUNED TO PUT THE WRONG PAPER ON THE TOP WHICH WAS THE ORIGINAL SIGNED ONLY BY ME.

AND THE SECOND PAGE IN THE SAME DOCUMENT OR SAME SUBMITTAL WAS THE FAX SUBMITTED FROM THE PLAINTIFF TO THE DEFENDANT AND FROM THE DEFENDANT'S COUNSEL BACK TO THE

PLAINTIFF, AND BECAUSE IT WAS SLIGHTLY SMUDGED, I BELIEVE IT WILL BE EASIER TO READ THE ORIGINAL AND I ATTACHED A FAXED COPY WITH THE TWO SIGNATURES.

BECAUSE OF THAT, I WILL NOT BE ABLE TO FIND AN ATTORNEY. IF I HAD EXTENSION, I COULD.

THE COURT: DENIED.

MR. KOLEV: I UNDERSTAND THAT THE COURT MIGHT SHORTEN THE TIME, AND I HAVE THE SAME EXPLANATION FOR ATTORNEY LEVY WHEN SHE SUGGESTED THAT I DID NOT GIVE THE RIGHT 21-DAYS NOTICE FOR MY ANSWER, AND THE PROBLEM WITH THAT WAS, I COULD

NOT MOVE THE DATE IF I WASN'T DENIED SO I HAD TO ANSWER, BASICALLY, AND THEN YOU HAVE TWO DAYS AFTER THAT IN ORDER TO COMPLY WITH THE REQUIREMENT TO FILE AN ANSWER TEN DAYS BEFORE THE HEARING. NOW, REGARDING THE SERVICE, YOUR HONOR, I LOOK AND I UNDERSTAND IT'S IMPORTANT TO HAVE A MAIL CERTIFICATION OF ALL OF THE PAPERS FILED WITH THE COURT.

THE COURT: IT IS ONE OF THE MOST IMPORTANT PARTS OF ALL PLEADINGS IN LAW, DUE PROCESS, SERVICE. WE HAVE TO HAVE IT.

MR. KOLEV: I READ IN THE RULES OF COURT THE PERSON WHO DO THE CERTIFICATIONS IS SUPPOSED TO BE AN ATTORNEY OR A THIRD PARTY, AND IN MY REPLY, I WASN'T AN ATTORNEY, I WASN'T A THIRD PARTY, SO I

FILED ONLY INSIDE OF THE POST OFFICE, AND ALL THE TIME I HAD POST OFFICE CERTIFICATE OF WHATEVER I SENT THE OPPOSING COUNSEL, AND, FOR EXAMPLE, IN THE FILING

FOR THE FIRST AMENDED COMPLAINT, OF COURSE, I WAS ABLE TO TRACK WHAT HAPPENED AND WHEN THE PAPERS WERE DELIVERED TO THE OPPOSING COUNSEL BECAUSE I REALIZED IT WAS KIND OF A PROBLEM, AND I HAVE BEEN TOLD ***THE PERSON WHO DELIVERED WAS JAIME CORAL (SIC), AND HE DID AT THE FIRST ATTEMPT TO DELIVER MONDAY MORNING AT 8:26, AND FINALLY,*** MY UNDERSTANDING WAS THAT I DON'T NEED THE PERMISSION OF COURT TO FILE THE AMENDED COMPLAINT. OF COURSE, IF IT'S NO ANSWER IN THE OPPOSING COUNSEL PLEADING AND IT'S NO TENTATIVE OR ANY RULING ON THE DEMURRER.

THE COURT: MR. KOLEV, I'M NOT GOING TO ADVISE YOU ON THE LAW. I CAN'T. WHEN I BECAME A JUDGE, THEY GAVE ME A BLACK ROBE AND TOOK AWAY MY ABILITY TO ADVISE THE PUBLIC, PROBABLY IN THE PUBLIC'S BEST INTEREST, I DON'T KNOW, BUT THAT'S WHY I'M TRYING TO TELL YOU THAT YOU NEED THE ASSISTANCE OF SOMEBODY THAT IS LICENSED.

YOU ARE GOING TO GET TRIPPED UP AGAIN AND AGAIN AND AGAIN BECAUSE YOU DO NOT KNOW THE RULES OF COURT AND THE RULES OF PRACTICE, AND, YOU KNOW, IF YOU VALUE YOUR CASE, THEN YOU MIGHT WANT TO TALK TO A LAWYER OR DO SOMETHING, BUT YOU'RE SIMPLY NOT FILING YOUR PAPERS IN THE CORRECT MANNER. YOUR PAPERS ARE NOT IN THE CORRECT MANNER AND YOU ARE FILING SOME THINGS THAT I HAVE NOT SEEN BEFORE, FRANKLY, THAT I'M NOT AWARE OF. IS THERE ANYTHING THAT YOU WOULD LIKE TO SAY?

MR. LEVY: I WOULD LIKE TO LET YOUR HONOR KNOW THAT OUR OFFICE RECEIVED A FIRST AMENDED COMPLAINT FROM PLAINTIFF WHICH WAS STAMPED FILED ON DECEMBER 6TH.

I'VE LET YOUR CLERK KNOW THIS MORNING, IT DOES NOT SHOW IN YOUR COMPUTER SYSTEM, BUT I HAVE A CONFORMED COPY. I SHOWED IT TO HER. I DON'T KNOW WHAT HAPPENED TO IT.

I INFORMED HIM ON THE TELEPHONE, I BELIEVE, THURSDAY OR FRIDAY OF LAST WEEK THAT I DID RECEIVE IT. I TRIED TO EXPLAIN THAT ACCORDING TO YOUR TENTATIVE RULING, HE HAD THE RIGHT TO FILE AN AMENDED COMPLAINT, AND NOW HE DID, BUT LIKE YOUR HONOR, I CAN'T ADVISE HIM ON THE LAW, BUT WE ARE HERE TODAY.

THE COURT: I DON'T HAVE A FIRST AMENDED COMPLAINT IN THE FILE.

MR. LEVY: FOR SOME REASON, IT IS NOT IN THE COURTHOUSE.

THE COURT: MR. KOLEV, DO YOU HAVE A FILED COPY, CONFORMED COPY OF YOUR FIRST AMENDED COMPLAINT?

MR. KOLEV: YES, I DO.

THE COURT: LISTEN TO ME. DO YOU HAVE A CONFORMED COPY OF YOUR FIRST AMENDED COMPLAINT?

MR. KOLEV: YES, YOUR HONOR. I HAVE THE COPY WHICH I FILED.

THE COURT: DID YOU KEEP A COPY? MR. KOLEV: YES, I DID.

THE COURT: DID THEY STAMP IT AS CONFORMED?

MR. KOLEV: THEY STAMPED JUST THE DATE. I HAVE TO EXPLAIN –

THE COURT: I'M ASKING THE QUESTIONS AT THIS POINT IN TIME. I WOULD LIKE TO BE PRESENTED WITH A COPY OF YOUR FIRST AMENDED COMPLAINT THAT YOU FILED WITH THE COURT. PLEASE, DO SO.

YOU FILED A NOTICE OF MOTION TO FILE AN AMENDED COMPLAINT, AND YOU'VE SET THAT FOR THE 15TH. INCLUDED IN THAT NOTICE OF MOTION IS A COPY OF THE FIRST AMENDED COMPLAINT. SIR, WHAT DO YOU MEAN, OF COURSE?

MR. KOLEV: THIS IS EXACTLY. I GOT IT FROM THE BOOKS. I MEAN, WITHOUT PERMISSION AND WITHOUT NEEDING PERMISSION.

THE COURT: WELL, THE ORDER OF THE COURT, BASED UPON THE RULING, WAS THAT THE DEMURRER WAS SUSTAINED AND YOU HAD 20 DAYS LEAVE TO AMEND.

NOW I DON'T KNOW IF YOU AMENDED PROPERLY OR NOT, BUT YOU HAVE FILED A FIRST AMENDED

COMPLAINT, AND BY REASON OF THE COURT'S RULING — BY REASON OF THE COURT'S RULING THAT WILL BE DEEMED FILED. YOU DON'T NEED TO HAVE A SPECIAL HEARING ON THAT BECAUSE IT IS ACTING IN ACCORDANCE WITH THE ORDER OF THE COURT, SO LET'S VACATE THE HEARING FOR LAW AND MOTION ON THE 15TH. DO YOU WISH TO HAVE THIS FIRST AMENDED COMPLAINT DEEMED FILED IN RESPONSE TO THE RULING ON LAW AND MOTION?

MR. KOLEV: I PREPARE IT BEFORE THE RULINGS.

THE COURT: IT'S A YES OR NO QUESTION.

MR. KOLEV: YES, I REALIZE THAT.

THE COURT: DO YOU WISH ME TO DEEM THE FIRST AMENDED COMPLAINT AS FILED AND VACATE THE JANUARY 15TH LAW AND MOTION CALENDAR AND REFILE A COMPLAINT IN ACCORDANCE WITH THE COURT'S RULING ON LAW AND MOTION?

MR. KOLEV: NO, YOUR HONOR.

THE COURT: YOU WISH TO CONTINUE WITH YOUR FIRST AMENDED COMPLAINT?

MR. KOLEV: YES.

THE COURT: WE'LL DEEM THE FIRST AMENDED COMPLAINT (FILED AND SEE WHAT HAPPENS FROM THERE.OKAY, ANYTHING FURTHER? MR. LEVY: NO, YOUR HONOR. THE COURT: ANYTHING FURTHER? MR. KOLEV: NOTHING, YOUR HONOR. THE COURT: THANK YOU. HAVE YOURSELVES A NICE DAY. MR. LEVY: YOU TOO. HAPPY HOLIDAY. THE COURT: SAME TO YOU. I ALSO WANT TO MAKE IT ABUNDANTLY CLEAR, IN MY COURT THERE IS NO ARGUING WITH THE OTHER SIDE OTHER

THAN IN COURT, AND I'M SAYING THIS BECAUSE I HAVE BEEN ADVISED THAT THERE HAS BEEN A COMPLAINT OF SOME PROBLEMS, PERSONAL PROBLEMS.

I WILL NOT HAVE IT. ANYBODY THAT CHOOSES TO HARASS, ANNOY, THREATEN, STRIKE WILL BE SUBJECT TO THE CONTEMPT POWERS OF THE COURT, WHICH MEANS, BEING LOCKED UP,(judge G.Lewis abuse of contempt powers proving his ex-parte communication throughhis son with defendant's counsel. (PROCEEDINGS CONCLUDED.)THANK YOU.

4. PEREMPTORY CHALLENGE TO JUSTICE GREGORY H. LEWIS-OC SUPERIOR COURT ON 01/17/03

SUPERIOR COURT CALIFORNIA, COUNTY OF ORANGE
CENTRAL JUSTICE CENTER-700 CIVIC CENTER DRIVE WEST
(UNLIMITED CIVIL CASE)

NICK A. KOLEV,	) Case No.: 02CC06912 ;
Plaintiff.	) Filed: on May 13th 2002
vs.	) Hon. Gregory H. Lewis,
	) Dept. C-22
TONYA M. PRESCOTT.ESQ.	) CASE MANAGEMENT STATEMENT
SB#123530,	) (Legal Malpractice-Fraud and Deceit)
PRESCOTT & PRESCOTT, Law Firm	) DATE: February 03, 2003
	) TIME: 8:30 a.m.
	) (filed and served ON JANUARY 17th, 2003)

TO THE HONORABLE GREGORY H. LEWIS, JUDGE OF THE ABOVE ENTITLED COURT:

Nick A. Kolev PLAINTIFF, after the oral argument on December 16th and the open court warning by Honorable Judge G.H.Lewis for actions to be taken against him for inquires he made for mail delivery of First Amended Complaint has a serious concerns for his safety and freedom.

In order to appear in Court the Plaintiff has to be sure he would not be persecuted or arrested for his filing of legal malpractice case:

1. THE PLAINTIFF BELIEVES IT IS A CONSPIRACY AGAINST HIM

All the motions of the plaintiff for time extension, his pleadings were denied or contested by the court. The status of his FIRST AMENDED COMPLAINT is unclear and there was no answer to it by the opposing counsel regardless of the fact that the Honorable Judge G.H. Lewis considered

it to be filed on the Oral argument hearing December 16th, 2002.

2.PLAINTIFF REQUESTS THE FOLLOWING REMEDIES:

a/ The honorable Judge G.H.Lewis evaluates the prominence of the defendant attorney and of Mr. and Mrs. Bruce Bridgman, who are not part of this case but their FIRM IS mentioned and IF IT IS A CONFLICT OF INTEREST excludes himself from

this case

b/ If remedy a/ is not acceptable to have a U.S. Attorney present in all court hearings and to have the media cameras and journalists presented in the court room;

c/ The plaintiff is trying his best to get represented by an attorney instead to show up in Proper Persona under the existing circumstances

Dated: January 17, 2003
Signed/N.Kolev/

5. PETITIONER MOTION FOR OBJECTION TO HEARING. OR TRIAL

SUPERIOR COURT CALIFORNIA, COUNTY OF ORANGE
CENTRAL JUSTICE CENTER-700 CIVIC CENTER DRIVE WEST

NICK A. KOLEV, Plaintiff, vs. TONYA M. PRESCOTT. ESQ. SB#123530, PRESCOTT & PRESCOTT Law Firm Defendants	Case No.: 02CC06912 Hon. Gregory H. Lewis, Dept. C-22 NOTICE OF WITHDRAWL; MEMORANDUM OF POINTS AND AUTORITIES; DATE: March 14, 2003 TIME:

TO DEFENDANT - HIS ATTORNEY ON RECORD MS. LAURA M. LEVY:

NOTICE IS HEREBY GIVEN that, on Friday, March 14, 2003 in Department C-22 of the above entitled court, located at 700 Civic Center Drive West, Santa Ana, California, plaintiff Nick A. Kolev will file with the court the attached NOTICE OF WITHDRAWAL; MEMORANDUM OF POINTS AND AUTORITIES;

The success of this complaint depends on the ability of the plaintiff to collect and present in the court accepted format all the evidence and depositions. Based on the rulings of the Status Conference from February 05th, 2003, the Honorable Judge Gregory H. Lewis was

determined to trial the case within a year of its filing - May 13th, 2002. The plaintiff's request to trial undelivered services between the two parties was not honored.

The plaintiff made significant effort for the last two months to find an attorney - more than 40 Legal Firms from Orange County and Los Angeles County specializing in Legal Malpractice have been contacted - but he was not successful.

In order to preserve his interest in the complaint before the expiration of Status of Limitations for Fraud and Deceit and in order to find an attorney and to complete the

gathering of evidence and depositions, THE PLAINTIFF IS WITHDRAWING HIS COMPLAINT WITH ORANGE

COUNTY SUPERIOR COURT.

Dated Friday, March 14, 2003

NICK A. KOLEV

PLAINTIFF, IN PRO PER

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION.

According to Statutes of Limitations for Fraud and Deceit California Supreme Court time limits does not run out within 3 years from the discovery - CCP § 338. The plaintiff considers the time of discovery to be May 14th, 2001.

2. PURPOSE OF THE WITHDRAWAL OF THE COMPLAINT.

The purpose of the withdrawal of the First Amended Complaint is to preserve the rights and the interest of the plaintiff in this case.The motions of the plaintiff:

- for extension of pretrial time , - for judicial notice of the facts and their consideration, - for trial of undelivered services under the Agreement between the two parties as "CASE WITHIN A CASE", - the request to evaluate the case for potential conflict of interest,- the request for media access, - the request for Federal Attorney presentation in the case - all of them were denied or not considered and not answered at ALL.

Also the time frame set up by Honorable Judge Gregory H. Lewis to trial the case within a year of the filing (The Status is prohibitive only two years after filing) makes it impossible for the plaintiff to collect and present all the evidence in the case because the case requires legal specialty at least in two fields: family law and professional malpractice law and the number of attorneys specializing in these two fields is very limited. Under the existing time frame it is impossible for the plaintiff to prepare the case without attorney and he is withdrawing his complaint in " A GOOD FAITH" for later consideration by the Orange County Supreme Court.

Dated this Friday, March 14, 2003

NICK A. KOLEV

PLAINTIFF, IN PRO PER

6. RULING IN DEPARTMENT C-22 , JUSTICE G. H. LEWIS-ORANGE COUNTY SUPERIOR COURT-NEVER MADE PART OF THE FILE AND POSTED TEMPORARY ON 03/04/03 ON THE INTERNET ONLY:

www.occourts.org/rulings/lewis.asp

Plt's complaint is filled with many conclusory, speculative and emotional allegations, but it does not contain the specific factual allegations necessary to state a cause of action against MP. As to the various fraud causes of action:

Fraud must be pled with specificity. Committee on Children's Television. Plts wild and conclusory allegations lack the specificity required. Plt does not plead to whom the representations were made, when they were made, by whom, and further does not provide facts supporting reasonable reliance. As to Legal malpractice cause of action: Plt does not plead that his wife would have settled for less. Marchak. As to the IIED cause of action: Plt does not plead facts which would constitute outrageous conduct, or reckless disregard. Cervantes. There is no opposition to indicate that Plt can plead these necessary elements. **The Demurrer is sustained without leave to amend.**

7. JUDGE G. LEWIS , ACCEPTED MOTION TO DISMISS WITHOUT PREJUDICE, BECAUSE HE DID NOT READ IT. HE SHOULD NOT ACCEPT IT AFTER DEMURRER.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER

Department: C22 Convened at:8.30

COURT CONVENED AT: ON: **March 17,2003**
JUDGE/COMM:**GREGORY LEWIS**
CLERK: **CHONA RAMOS**
BAILIFF:**Michael Baker** REP:**Roberta Martin CSR#3625**
Court Type: Civil Court Category:Malpractice-Legal
Case Number 02CC06912 Doc Seq No. 43 Event 002
TRIAL JURY Filing party 998/COURT

No appearances. Trial is taken off calendar. Defendant's Demurrer to the First Amended Complaint was sustained without leave to amend on 3-5-03. Notice of Withdrawal of First Amended Complaint filed by plaintiff on 3 -17-03. Entered : 3-17-03

8. JUDGE G. LEWIS , ONCE FACED WITH TWO RECUSE CHALLENGES COOKED THE DISMISSAL ORDER WITH BACK DATE OF 04/01/03 TO MAKE THE CHALLENGES LATE.

(This miscarriage of justice RULING was reported to Commission on Judicial Performance, both challenges were filed in court at the same day, but the Corrupt Orange County Superior Court procedure requires(the Law of Wild West) the ABUSIVE JUDGE TO FILE HIMSELF motion for HIS abuse, which gave him time to cook the minute order of dismissal. This corrupt procedure was reported to Presiding and Supervising Judges without effect, because probably they put it in the first place to protect themselves)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER
Department: C22

COURT CONVENED AT: ON: **APRIL 23,2003**
JUDGE/COMM:**GREGORY LEWIS**
CLERK: **CHONA RAMOS**
BAILIFF: **NONE** REPORTER:**NONE**

AND THE FOLLOWING PROCEEDINGS WERE HAD:
02CC06912 KOLEV VS PRESCOTT

No appearances. A Motion for Peremptory Challenge pursuant to C.C.P. 170.6 having been filed on April 18, 2003 and a Motion for Challenge for Cause pursuant to C.C.P. 170.1 on April 21, 2003, by plaintiff Nick A. Kolev, as to the Hon. Gregory H. Lewis. Court finds it no longer has jurisdiction on the matter. Court sustained the Demurrer to the First Amended Complaint without leave to amend on 3-5-03. Order of Dismissal filed on 4-1-03. Clerk to give notice. Entered: 4-23-03 Nick A. Kolev. 10720 Lakewood Blvd.,# 340, Downey, CA 90241 Hollins & Fields LLP, 23801 Calabasas Road, Suite 100, Calabasas, CA 91302 1597

CLERK'S CERTIFICATE OF MAILING (CCP 1013A) -1. Mailing and execution of this certificate occurred on 4-23-03 at Santa Ana, California. by: /S/ Deputy Clerk C. Ramos

9. PREJUDICIAL DENIAL OF NEW TRIAL HEARING BY CHALLENGED JUDGE G. LEWIS , WHO *FORGOT* ABOUT INTERLOCUTORY ORDER ON MARCH 17TH MAKING THE MOTION TIMELY AFTER NOTICE ON MAY 1ST BY OPPOSING COUNSEL.

(This miscarriage of justice ruling never been explained by Judge Lewis, opposing counsel, or Court of Appeal, because the only law behind it is the one of Wild West)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER
Department: C22

COURT CONVENED AT: ON: **MAY 13,2003**
JUDGE/COMM:**GREGORY LEWIS**
CLERK: **CHONA RAMOS**
BAILIFF: **NONE** REPORTER:**NONE**

AND THE FOLLOWING PROCEEDINGS WERE HAD:
02CC06912 KOLEV VS PRESCOTT

No appearances. A Notice of Motion for New Trial having been filed on 5-9-03 by plaintiff, Nick A. Kolev, **Court finds it no longer has jurisdiction on the matter.** Court sustained the Demurrer to the First Amended Complaint without leave to amend on 3-5-03. Order of dismissal signed and filed on 4-1-03. Clerk to give notice. Entered: 5-13-03***(Nothing about Order from 03-17th-03)***

Nick A. Kolev, 10720 Lakewood Blvd., # 340, Downey, CA 90241 Hollins & Fields, LLP, 23801 Calabasas Rd., Ste. 100, Calabasas, CA 91302-1597

CLERK'S CERTIFICATE OF MAILING (CCP 1013A) -1 certify I am not a party to this cause, that I am over 18, and that a copy of this document was mailed first class, postage prepaid, in a sealed envelope addressed as shown below. Mailing and execution of this certificate occurred on 5-13-03 at Santa Ana, California. ALAN SLATER, EXECUTIVE OFFICER AND CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIAJJ AND FOR THE COUNTY OF ORANGE, /S/ Deputy Clerk C. Ramos

10. COURT OF APPEAL DENIAL OF SETTLEMENT CONFERENCE

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NICK A. KOLEV

Plaintiff and Appellant G032337

v. (Super Ct. No. 02CC06912)

TONYA E. PRESCOTT,

Defendant and Respondent O R D E R

The court has determined that **this case is not appropriate for a settlement** conference at this time.

SILLS, P.J.

SILLS, P.J /S/

cc: See attached list

COURT OF APPEAL 4TH DIST DIV 3
FILED MAR - 03 2004
Deputy Clerk.

11. APPELLATE JUSTICE W. RYLAARSDAM FRIVOLOUS LEGAL OPINION IN COVER UP OF CORRUPTION OF HIS FRIEND JUSTICE G.LEWIS, REFUSING ALL REQUESTS TO PUBLISH IT.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b)

COURT OF APPEAL 4TH DIST DIV 3

FILED JUN - 9 2004

Deputy Cterk.

Appeal from a judgment and postjudgment order of the Superior Court of Orange County, Gregory H. Lewis,Judge. Judgment affirmed. Postjudgment order affirmed.

Nick A. Kolev, In Pro. Per.,
or Plaintiff and Appellant.

Hollins & Levy, Byron S. Hollins, Laura M. Levy and Dana M. Gilbreath

for Defendants and Respondents.

Plaintiff Nick A. Kolev, proceeding in propria persona, brought a legal malpractice action against his former attorney,

Tonya E. Prescott, and her law firm, Prescott & Prescott Law Firm (defendants). Defendants represented plaintiff during the dissolution of his marriage. Plaintiff contends the court erred in dismissing the action after sustaining a demurrer and by failing to rule on his motions for disqualification. We disagree and affirm both the judgment and postjudgment order. To the extent the facts are relevant, they are included in our discussion of the issues.

DISCUSSION

Failure to Rule on the Disqualification Motions

The order dismissing the action was entered on April 1, 2003. Thereafter, plaintiff filed a challenge for cause and a peremptory challenge under Code of Civil Procedure sections 170.1 and 170.6. The court then issued an order declining to rule on these challenges for lack of jurisdiction. Plaintiff argues the judge erred in failing to disqualify himself. While he argues doubt exists about the actual date on which the order of dismissal was entered, the record shows it was entered on April 1, 2003. Thus, it is evident plaintiffs postjudgment peremptory challenge and challenge for cause were not timely made. *(Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 387; *Mancini v. Superior Court* (1964) 230 Cal.App.2d 547, 557.)

But in a case management statement filed before the case was dismissed, plaintiff included a request for the trial judge to determine whether he had a conflict of interest relating to Mr. and Mrs. Bruce Bridgman, persons mentioned in the underlying action. The request did not properly raise the issue for the court's consideration. Plaintiffs "statement" failed to describe any sort of relationship between the judge and the Bridgmans, much less one that would require the judge to disqualify himself. Nevertheless, plaintiff contends the court was obligated to strike the improper request rather than simply ignore it. Even assuming the court erred by doing nothing, plaintiff is not entitled to reversal because his "statement" alleged insufficient grounds for disqualification. (See *Unas v.*

Harris Farms, Inc. (1991) 234 Cal.App.3d 415, 424.)

Order Sustaining Demurrer Without Leave to Amend

1. Introduction

In the underlying marital dissolution action, defendants represented plaintiff in a mediation which resulted in a settlement. A stipulated judgment was entered, and immediately thereafter, plaintiff expressed his dissatisfaction with the settlement in a letter to defendants. A few days later, the parties executed a substitution of attorney form. Plaintiff then sued defendants for fraud, legal malpractice, and intentional infliction of emotional distress.

Plaintiff contends the court erred in sustaining the demurrer to the first amended complaint without leave to amend because (1) defendants failed "to specify the uncertain aspects of [the] complaint"; (2) defendants were apprised of the bank accounts at issue; (3) any ambiguous facts were "presumptively within [defendants's] knowledge";

and (4) "the first count for bank account concealment... ha[d] two references showing in chronological detail, when [and] where the account division was demanded and what [defendant] fail[ed] to do to divide the account." Plaintiff further appears to allege defendants obtained his ex-wife's bank statements but withheld some of them from him, and, based on this allegation, he contends defendants "knew exactly how much money [was] commingled."

"When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.]"*{Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Applying this standard of review to the allegations in the first amended complaint, we conclude the court did not abuse its discretion by sustaining the demurrer without leave to amend.

2. *Fraud and Deceit Causes of Action*

Plaintiff contends he pleaded the fraud and deceit causes of action with sufficient specificity by referring to the house his ex-wife purchased after the date of separation, which he contends was misrepresented as her separate property and thus improperly omitted from the settlement agreement due to defendants's fraud. He similarly argues his allegations relating to a "commingled" bank account were sufficiently specific to state a cause of action for fraud. We disagree.

To adequately plead a cause of action for fraud or deceit, plaintiff must allege facts to support each of the following elements: "a representation, usually of fact, which is false, knowledge of its falsity, intent to defraud, justifiable reliance upon the misrepresentation, and damages resulting from that justifiable reliance. [Citations.]" *{Stansfield* v. *Starkey* (1990) 220 Cal.App.3d 59, 72-73.) In addition, "the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.' [Citation.]" *(Id.* at p. 73.)

Plaintiffs allegations supporting his first four causes of action for fraud at most indicate defendants may have failed to fully investigate whether certain funds plaintiffs ex-wife used to purchase a house after the date of separation and other funds in the referenced bank accounts were community property. Even if true, these allegations do not demonstrate fraud.

In sustaining the demurrer, the court found that plaintiffs fraud causes of action were not pleaded with specificity. Terming the allegations "wild and conclusory," the court stated, "[Plaintiff] does not plead to whom the representations were made, when they were made [or] by whom, and further does not provide facts supporting reasonable reliance." As defendants succinctly state, "nowhere in the first four "fraud and deceit' causes of action ... does [plaintiff] set forth a single specific representation that he contends was false, let alone how, when, where or by what means the "representations' were made."

Plaintiffs sixth cause of action for fraud and deceit is

predicated on defendant Prescotfs purported threat to withhold plaintiffs case file from him in order to induce him to sign the substitution of attorney form. But even if true, as defendants point out, plaintiff cannot establish that he was harmed since this happened after judgment had already been entered in the dissolution proceeding.

It is well settled that "*[v]ague, conclusory allegations of fraud or falsity may not be rescued by the rule of liberal construction.' [Citation.]" *(Alien v. Jones* (1980) 104 Cal.App.3d 207, 215.) Plaintiffs failure to specifically plead facts supporting each element of his fraud and deceit causes of action precludes recovery on those claims. *[Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1332.)

3. Legal Malpractice Cause of Action

In his fifth cause of action, plaintiff asserted a claim for legal malpractice illeging "defendant failed to exercise reasonable care and skill in drafting and executing he property division agreement." But as the trial court found, plaintiff failed to "plead hat his wife would have settled for less."

To prevail on a claim for legal malpractice arising out of a marital issolution wherein the parties entered into a settlement agreement, the plaintiff must liege "that the dissolution action would have resulted in a better outcome had defendant ^commended that [the plaintiff] reject the settlement offer." *(Marshak v. Ballesteros* 1999) 72 Cal.App.4th 1514,1518.) The plaintiff in such a case must do more than liege the possibility of damage; rather, it must be shown "as a legal certainty. [Citation.]" *(Ibid.,* italics omitted.) Harm that is merely speculative is not adequate to support the damage element of a legal malpractice cause of action. *(Id.* at p. 1519.)

Although *Marshak* involved an appeal from the granting of summary judgment, its holding applies equally to the sustaining of a demurrer. Thus, here, as in *Marshak,* it was not enough for plaintiff to allege facts showing "the case was worth more than he settled it for." *(Marshak v. Ballesteros, supra,* 72 Cal.App.4th at p. 1519.) Plaintiff had to allege facts showing that "his ex-wife would have settled for less than she did, or

that, following trial, a judge would have entered judgment more favorable than that to which he stipulated." *(Ibid.*[9]*,* see also *Orrick Herrington & Suttcliffe v. Superior Court* (2003) 107 Cal.App.4th 1052,1054 [damage element not met by expenditure of legal fees in unsuccessful attempt to overturn settlement in martial dissolution action].)

4. Intentional Infliction of Emotional Distress Cause of Action

The court sustained the demurrer as to plaintiffs cause of action for intentional infliction of emotional distress stating, "[Plaintiff] does not plead facts which would constitute outrageous conduct, or reckless disregard." Plaintiff argues that the pleading was adequate wherein he alleged that defendant Prescott ordered her typist to call the police when he insisted she turn over her files to him after he signed the substitution of attorney form. He further appears to contend this cause of action was adequately pleaded based on the fact defendants knew he was assigned all the credit debt and ordered to pay $1,700 per month in child support, yet turned his unpaid bill for legal services over to a collection agency.

"The elements of a prima facie case for the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiffs suffering severe or extreme emotional distress; (3) and actual and proximate causation of the emotional distress by the defendant's outrageous conduct. [Citations.? *(Cervantes v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 593.) To be considered outrageous, "[conduct... must be so extreme as to exceed all bounds of that usually tolerated in a civilized community. [Citations.]" *{Ibid.)*

None of plaintiffs allegations in regard to defendants's representation of him during the dissolution proceeding rise to the level of outrageous conduct. Similarly, asking plaintiff to leave defendants's office and instructing the staff to call the police when he became "belligerent and threatening" does not constitute outrageous conduct. Nor was it outrageous for defendants to turn plaintiffs unpaid bill over to a collection

agency.

DISPOSITION

The judgment and postjudgment order are affirmed. Respondents shall recover their costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J. FYBEL, J.

12. APPELLATE JUSTICE W.RYLAARSDAM DENIAL FOR PUBLICATION AND REHEARING

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b)

NICK A. KOLEV

Plaintiff and Appellant G032337

v. (Super Ct. No. 02CC06912)

TONYA E. PRESCOTT,

Defendant and Respondent

ORDER MODIFYING OPINION, DENYING PETITION FOR REHEARING, AND DENYING REQUEST FOR PUBLICATION

The opinion filed in this case on June 9, 2004 is hereby ordered modified as follows: On page 1, "Dana M. Gilbreath" is corrected to read, "Dana M. Gilreath."

This modification does not effect a change in the judgment. Appellant's petition for rehearing and request for publication are DENIED. Our opinion does not meet the standards set forth in California Rules of Court, rule 976(b)

Pursuant to rule 978, the clerk of this court is directed to forward a copy of our opinion, this order, and the request for publication to the Supreme Court.

RYLAARSDAM, J.

WE CONCUR: SILLS, P. J. FYBEL, J.

COURT OF APPEAL 4TH DIST DIV 3
FILED JUN - 29 2004
Deputy Clerk.

13. REQUEST OF PETITIONER N. KOLEV TO COURT OF APPEAL AND CALIFORNIA SUPREME COURT TO PUBLISH FRIVOLOUS LEGAL OPINION AS OVERRIDING EXISTING LAW REGARDING PEREMPTORY CHALLENGE TO A JUDGE

IN THE COURT OF APPEAL OF THE STATE OF

CALIFORNIA,

FORTH APPELIATE DISTRICT

DIVISION THREE

On Appeal from the Superior Court of the County of Orange No- 02CC06912

The Honorable G.H.Lewis, Judge.

TO HONORABLE W. RYLAARSDAM-JUSTICE OF THE COURT OF APPEAL

I, Nick A. Kolev, a Civil Engineer and the Plaintiff and Appellant for the above case IS REQUESTING PUBLICATION OF THE LEGAL OPINION OF COURT OF APPEAL FOR THE ABOVE CASE, FILED ON JUNE 9TH, 2004 FOR THE FOLLOWING REASON:

According to Cal Rules of Ct 978(a) Appellant has the right to ask and if the Legal Opinion meets the criteria of Cal Rules of Ct 976(b), it HAS TO BE PUBLISHED.

It establishes a new rule of law; It applies an existing rule to a set of facts significantly different from those in other published opinions; It modifies or criticizes an existing rule; It resolves or creates an apparent conflict in the law; It involves a legal issue of continuing public interest; or It makes a significant contribution by reviewing the development of a common law rule, constitutional provision, statute, or other written law.

In other words when JUSTICE W. RYLAARSDAM

FRIVOLOUS LEGAL OPINION IS TAKING THE LAW FOR A **RIDE IN "NEVERLAND"**, HIS OPINION HAS TO BE PUBLISHED IN ORDER TO APRAISE THE JUDICIARY OF POSSIBILITY OF SUCH A FANTASY, SO ONE DAY THEY COULD MAKE THE SAME FANTASTIC TRIP.

This Opinion also has to be published because it is a Document witnessing the Very Existence of **BAR SEGREGATION OF PLEADINGS, MOTIONS, REQUESTS, CITATIONS OF FACTS AND LEGAL AUTHORITIES, OBJECTIONS.**

BAR SEGREGATION-PHYSICAL BARRIER DIVIDING, FILTERING ANY THING REACHING THE JUDGE ON "OURS" AND "THEIRS".

When Justice is addressed from INNER SIDE OF THE BAR (FROM HIS BAR BUDDIES-please, no associations with drinking bar buddies/) they are glorified regardless of their pleading or legal value and just the opposite, when they are coming from OUTSIDE OF THE BAR (FROM A LAY PERSON), they NEVER MAKE IT THROUGH BAR SEGREGATION, regardless of dedication, genuine research capacity and truthfulness of a LAY PERSON.

That's how Orange County Courts are interpreting the Constitutional principle for Fair and Due process which supposed to produce:...and JUSTICE for ALL according to the pledge of allegiance and the same time they keep the Esoteric heritage of the SECRET SOCIETY OF BAR TEMPLAR, who started the Legal profession in area called Inner Bar in the City of London.

Example 1.

On January 17th, 2003 N.Kolev filed a signed statement for disqualification of Honorable *G.Lewis Ap.Ax. Vol 2 at 216, at 217* believing the disqualification would further the interests of justice (CCP §170-l(a)(6)(A)); doubt about the judge's capacity to be impartial (CCP §170.1(a)(6)(B); (CCP §170.1(a)(6)(C))

The CCP permits a disqualification of a judge for prejudice upon a sworn statement, without being required to establish it as a fact to the satisfaction of a judicial body. *Grant*

v. Superior Court (App. 6 Dist. 2001) 108 Cal.Rptr.2d 825, 90 Cal.App.4th 518, if timely filled and in proper form, the trial court is bound to accept it without further inquiry.

If statement of disqualification is untimely or legally insufficient on its face, judge must strike it from file within 10 day for filing consent or answer, and the judge can not simply ignore the statement, if judge does not strike statement and wants to contest his disqualifications, judge must file answer within 10 day period admitting or denying allegations in statement; if judge fails to do so, judge is deemed to have consented to disqualification and he is disqualified See annotated CCP § 170.3(c) (2),(3),(4) Urias v. Harris Farms, Inc (App. 5 Dist. 1991) 285 Cal.Rptr. 659, 234 Cal.App. 3d 415.

Justice W. Rylaarsdam is objecting this legal point stating the ignorance of BAR Buddy Justice G. Lewis is justified, because the alleged disqualifying grounds are deficient.

How Justice Rylaarsdam would know that without hearing any explanations from Attorneys Bruce and Vicky Bridgman, Defendant Attorney Prescott or Justice G. Lewis?!?!- both had or having cases with Justice G. Lewis presumably because of the size of their legal firm. BAR Buddies Justice G.Lewis and B. Bridgman have been working together as Deputy DA. The answer is simple -BAR SEGREGATION - OUR BAR BUDDIES ARE NEVER WRONG, ISN'T IT.

But Once Justice W. Rylaarsdam is taking the Law Practice in NEVERLAND his guess is as good as everybody's guess even when he is guessing the reasoning of his Bar Buddy Justice G. Lewis (between 1989 and 1995 both Justices worked as OC Superior Court Judges).

The reasoning of Justice Lewis to this Peremptory Challenge was not deficiency, because Appellant asked him about it at Status Conference on February 03, 2003 and Justice Lewis has said *that he is not aware of existence of such a paper 14 days after it was filed with a Court* (RT-02/03/2003) The reason is BAR SEGREGATION which is holding the PLEADING papers as filter. That's the reason Justice W. Rylaarsdam and LAYMAN knows it from the mouth of Justice

G. Lewis he is NOT MAKING A FRIVOLOUS GUESS LIKE YOU.

This relationship b/w BAR Buddies Bridgmans and Justice G. Lewis is NOT THE ONLY CHALLENGE as you frivolously conclude Justice W. RYLAARSDAM. Second question is a Judge prejudice. Justice G. Lewis denied stipulated extension of time of LAY PERSON needed to prepare answer in the Middle of Thanks Giving Holidays *Ap. Ax p.34. (cited in January 17th 2003 statement)* .

Also the Third reason is the BAR Buddy Judge G. Lewis GESTAPO TACTICS on December 16th, 2002 BAR Buddy Judge G.H. Lewis left his bench and jesting told the Plaintiff: *"Anybody that chooses to harass, annoy, threaten, strike will be subject to the contempt powers of the court, which means, being locked up.* [cite] , Ct. Rep. Trsc. 12/16/02 at 4, Ln 19. Commenting about a subject outside of Court.

This prove of Ex-Parte communication between Justice G. Lewis-his son Attorney J.J. Lewis, and Counsel for Defendant - Attorney M. Levy about how LAY MAN got mad at the Fed. Ex delivery man, who neither delivered, neither called back and did not involve anybody from the case. So if you are scared for your life from a saber-rattling Judge, who is promising to " lock you up" this is a DEFICIENT GROUND?!?!. Important addition to the Law in these terrorist times isn't it?

IN CONCLUSION BAR Buddy Justice G. Lewis was as much ignorant to a challenge from a LAY PERSON AND DID NOT READ IT as BAR Buddy Justice W. Rylaarsdam was ignorant in writing a Legal Opinion about Opening and Reply Briefs of the same LAY PERSON containing more than 350 Legal Points and Authorities which he DID NEITHER READ, NEITHER ADDRESSED.

Now even for a LAY PERSON is clear a Judge has to strike a challenge for recuse because, that would avoid the guessing of his reasoning and messing up the ultimate question IF THE BAR BUDDY JUDGE FURTHER RULINGS after the 10th day ARE GOOD OR VOID according to the law.

To make the Embarrassment total Bar buddy Justice W.

Rylaarsdam is approving the ignorance of Bar buddy Justice G. Lewis, but is giving a Legal example the same Urias v. Harris Farms, Inc, which is disapproving the ignorance of a Judge when challenged. On p. 415 we read: *The Court of Appeal reversed the judgment and denied the petition. It held that, even if plaintiff's statement was untimely or legally insufficient, Code. Civ. Proc., § 170.3, subd. (c)(4), operated such that the judge's failure to respond constituted consent to the disqualification. It also held that the summary judgment was voidable, since it was granted by a disqualified judge who was timely and sufficiently challenged. (Opinion by Thaxter, J., with Martin, Acting P. J., and Buckley, J., concurring.)*

So this twisted by BAR SEGREGATION opinion has to be published as a lowest Court of Appeal Standard available only from the back door or under the table for BAR BUDDIES..

Example 2.

Irritated by the systematic BAR SEGREGATION from Defendant's Counsel, who ignored 100% the facts and pleadings cited by a LAY PERSON, this LAY PERSON stated in his reply brief (*R.P. at p. 3*): *The twist and misleading of the facts targets the busyness and overloading of the reviewing court hoping there would be a reading only of Respondent's brief.*

For example the hastily filed on May 08, 2001 DRAFT Property Settlement Agreement without consent of the appellant and in abuse of fiduciary duties is called Final Judgment four times *particularly at the beginning and at the end of the RB, so it could not be missed (RB pp. 3, 26, 19, 22).*

It is not a quadruple innocent mistake, because next sentence on (RB. p. 22) is calling the correspondence after May 08, 01 post settlement. That makes the demands of Appellant to fix the Agreement unreasonable because it is a big difference between setting aside Draft Agreement and Appealing final Judgment [AB p. 12].

In his opening statement about demurrer Justice W. Rylaarsdam is falling in the trap and is calling Draft Agreement a Judgment. Also further on analyzing why not returning the Original bank statements in violation of California Rule of

Court 3-700(D)(1) and definitely proving destruction of Evidence according to Rule of Court 5-220, Justice W. Rylaarsdam frivolously concludes there was no damage because the argument between LAY PERSON and representing him BAR BUDDY Attorney T. Prescott, who is groomed for a Judge, occurred after Judgment.

The Difference what could be done after Draft Agreement is filed but before Judgment is entered is enormous and is pointed out by LAY MAN (O.B. p.12)

If the client is held to terms agreed to by counsel without authorization, the client has recourse against the attorney for acting in excess of authority. [In re Marriage of Helsel (1988,4th Dist) 198 Cal App 3d 332, 243 Cal Rptr 657]. Marital settlement agreement, not into Judgment, are voidable due to fraud, duress, undue influence, or mistake. [CC §§ 1556 et seq.]; see Re Marriage of Gomale's (1976, 2nd Dist) 57 Cal App 3d 736, 129 Cal Rptr 566, or inequitable, even in the absence of fraud or compulsion. [Re Marriage of Moore (1980,4th Dist) 113 Cal App 3d 22, 169 Cal Rptr 619].

BAR BUDDY Attorney M. LEVY ALSO carried a lot of responsibilities misleading BAR BUDDY Appeal Justice W. Rylaarsdam by these multiple misstatements what is Agreement on 05/08/01 and what is Judgment on 10/19/01 according to California Rule of Court 5-200(B) Bar Member should not mislead Justice by false statement. This element of Violation of Ethics is something to be decided by State Bar Intake Unit, not by Court of Appeal.

This has to be published too, because is an example how easy is to mislead a Justice when he does not read the briefs. IF HE HAS TO READ THEM, OR NOT?!?!?!

Example 3.

Justice W. Rylaarsdam is approving Post Judgment Orders ACCORDING TO BAR SEGREGATION STANDARD without analyzing them, without reading them.

On May 09th, 2003 N.Kolev submitted a Notice and Motion for new trial claiming abuse of discretion, prejudice to the party, excessive damages under CCP § 657(1),(4),(5)(6).The Notice was timely within 15 days from service of notice of

judgment by moving party on May 01st, 2003.

Procedural steps for making and ruling on motion are mandatory and must be strictly followed). See *Cembrook v Sterling Drug Inc.* (1964) 231 CA2d 52. 66, 41 CR 492.

Justice G. Lewis dismissed the motion because was late, but did not explain why late, when according to the cited above law was not - BAR SEGREGATED OPINION IS THE ONLY REASON.

All decisions of the Supreme Court and courts of appeal are required to be in writing, stating the reasons for the decision [Cal. Const.. art. VI, § 14].

When a decision treats an issue in a summary and conclusory manner, and is virtually devoid of reasoning, its authoritative status is undermined [City of Berkeley v. Superior Court (1980) 26 Cal. 3d 515. 533, 162 Cal. Rptr. 327, 606 P.2d 362].

Justice W. Rylaarsdam confirmed ruling because according to the same BAR SEGREGATION RULE OUR BAR BUDDIES ARE NEVER WRONG AND THE LAY MAN IS NEVER RIGHT.

So in this third example the law was taken for a ride in NEVERLAND AGAIN.

When Court of Appeal Justice is removing all mandatory steps for NEW TRIAL under BAR SEGREGATION principle and to please his BAR BUDDIES ONLY, that NEVERLAND Law has to be published. That's the meaning of Cal Rules of Ct 976(b).

Justice W. Rylaarsdam is fighting FRIVOLOUS LEGAL SUIT BY WRITING FRIVOLOUS LEGAL OPINIONS WITHOUT READING THE BRIEFS.

HOW THE SUPERIOR COURT OF CALIFORNIA COULD MISS TO

PUBLISH SUCH A FANTASTIC TRIP TO NEVERLAND LAW-IT JUST COULD NOT, COULD IT?!?!?!?!

Grace of BAR SEGREGATION principle My CONSTITUTIONAL RIGHT to FAIR and DUE PROCESS was violated by BAR Buddy Attorney T.Prescott, who is

groomed for a JUDGE, and who committed PRIMA FACIE 7 counts of Fraud and Deceit, by BAR Buddy Attorney M. Levy who viciously refused to consider and answer legal points and authorities, BECAUSE the BAR Buddy who has to decide case Justice G. Lewis, who committed every possible and impossible violation of Judicial Cannons is under the same BAR SEGREGATING principle, BECAUSE his son BAR Buddy J.J.Lewis is working with defense counsel BAR Buddy M. Levy. When reaching Court of Appeal BAR Buddy Justice R. Fybel MEMBER CALIFORNIA SUPREME COURT ADVISORY COMMITTEE ON CODE OF JUDICIAL ETHICS; CHAIR OC SUPERIOR COURT PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE after a number of question showing the BAR Buddy J. J. Lewis was identified by First, Last name and age, and place of work and the information is coming from a public record by BAR SEGREGATION principle DID NOT FIND *EVEN NEEDED TO CLEAR* THIS FUNDAMENTAL QUESTION ABOUT FAIRNESS, BAR Buddy Justice W. Rylaarsdam produced a FRIVOULUS ILLEGAL OPINION without reading the briefs and that FRIVOULUS ILLEGAL OPINION are NOT SUPPOSED TO BE PUBLISHED.

THE OUTCOME:

Defrauded of house, bank account for $120,000, files not returned for 3 years (all of them, not just few as frivolously says Justice W. Rylarsdam) and the Court System rotten by BAR SEGREGATION from the bottom and to the top bounded by BAR BODDIES SECRET SOCIETY could not find any thing wrong including viciously prejudicial Judge and his son working for Defense Counsel.

THE DECISION:

Supreme Court has the power to impose a higher standard of conduct on attorneys than that applicable to other professionals [Howard v. Babcock (1993) 6 Cal. 4th 409, 418, 25 Cal. Rptr. 2d 80, 863 P.2d 150].

SO IF THE LAW IS NOT BOUNDING FOR JUDICIAL OFFICERS AND THEY VIOLATE MY FIRST, FOURTH, SEVENTH AMENDMENT CONSTITUTIONAL

RIGHTS, GUESS WHAT, I AM NOT BOUNDED BY THEIR DECISION TOO IF MY CONSTITUTIONAL RIGHT TO REPRESENT MYSELF EXCLUDES THE CONSTITUTIONAL RIGHT TO SUCCEED.

THEREFORE:

1./ I WOULD TAKE THIS FRIVOLOUS ILLEGAL OPINION TO THE STEPS ON CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE, CALIFORNIA SUPREME COURT OR GOVEROR MENSION(what ever is the advice of independent media);

2./ I WOULD DRESS IN JUDGE GOWN WITH SKULL AND BONES SYMBOLIZING SECRET SOCIETY OF BAR BUDDIES, BOUNDED BY BAR SEGREGATION PRINCIPLES;

3./ I WOULD CARRY A BANNER FRONT-BAR SEGREGATION, VICIOUS RECIDIVISM OF SLAVERY, BACK- COURTS CORRUPTION-HEART ATTACK FOR AMERICAN DEMOCRACY 30 SQ FT IN SIZE, SO COULD BE SEEN EVEN FROM THE RUSSIAN SATELITE;

4./ I WOULD PICK UP THIS FRIVOLOUS ILLEGAL OPINION AND I WOULD (...) ON IT FOR THE BENEFIT OF THE GREAT PEOPLE OF CALIFORNIA AND FOR DEFENSE OF THE CONSTITUTIONAL RIGHT TO REPRESENT AND TO SUCCEED MYSELF STARTING ANOTHER *BROWN vs. BOARD SCHOOL OF EDUCATION* IN THE LEGAL SYSTEM.

5./ I WOULD START A WATER DIET, SOME PEOPLE CALL IT ' HUNGER STRIKE"

6./ SEE WHAT IS GOING TO LOOK LIKE THE PUBLIC TRIAL OUTCOME OF CORRUPT 50 BILLION DOLLAR INDUSTRY PRODUCING NOTHING BUT TAXATION ON THE GREAT PEOPLE OF CALIFORNIA IN THIS SO CONTESTED ELECTION YEAR.

THAT'S MY PUBLICATION READY KIT OF THIS ILLEGAL FRIVOOLOUS OPINION REGARDLESS WHAT YOU DO WITH IT

BEST AVAILABLE COPY

_____ {signature}
Nick A. Kolev PhD PE[Plaintiff and Appellant]

cc: Honorable A. Schwarzenegger-Governor of California
State Capitol Bldg.
Sacramento, CA 95814

cc: **Commission on Judicial Performance**
455 Golden Gate Ave., Suite 14400
San Francisco, CA 94102

cc: State Bar of California
Chief Counsel Intake
180 Howard Street
San Francisco, CA 94105

cc: Honorable US Senator Barbara Boxer
312 N. Spring St., Suite 1748 L.A. CA 90012

cc: **Honorable US Congresswoman Lucille Roybal-Allard**
255 E. Temple St., Suite 1860
L.A. CA 90012-3334

14. CALIFORNIA SUPREME COURT DENIAL OF REVIEW

Court of Appeal, Fourth Appellate District. Division Three - No. G032337
S126426

IN THE SUPREME COURT OF CALIFORNIA

En Banc

NICK A. KOLEV, Plaintiff and Appellant,

v.

TONYA E. PRESCOTT, Defendants and Respondents.

Petition for review DENIED.

SUPREME COURT
FILED
AUG 2 5 2004

Frederick K. Ohlrich Clerk
DEPUTY

GEORGE
Chief Justice

15. CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE-COMPLAINT FROM APPELLATE JUSTICE WILLIAM RYLAARSDAM

Court of Appeal Case No. G032337
OC Superior Court Case No.: 02CC06912
Hon. Judge Gregory H. Lewis, Dept. C-22
Unlimited Civil Case Fraud and Deceit

Nick A. Kolev, deposes and says:

I. CAUSE FOR THIS FILING AGAINST APPELLATE JUSTICE W. RYLAARSDAM

Court of appeal justice W. Rylaarsdam has produced on June 09th, 2004 legal opinion which is totally missing the question about RETURNING THE FILES TO CLIENT FROM HIS ATTORNEY, THE PERSONAL INTEREST OF Justice G. Lewis HAVING HIS SON WITH DEFENDANT'S COUNSEL, regardless of detailed questioning by justice R. Fybel ON ORAL ARGUMENT ON May 19th, 2004. THE OBVIOUS AND UNDISCRET PREJUDICE OF JUSTICE G. LEWIS TOWARDS PLAINTIFF N. KOLEV IS UNACCOUNTED FOR REGARDLESS OF FINDINGS IN APPELLANT APPENDIX.

Based on bar segregated distortion of mind, consciousness, memory, law, honesty, court of appeal responsibility, justice W. Rylaarsdam is producing the legal opinion which is soft to say frivolous, inaccurate, unlawful, based on bar segregation, never reading or considering layman pleadings. He could not find any thing wrong in bar buddies corruption , who consider losing a house, $120,000 account, defrauded of all 40 bank statements not only nothing wrong with that, but the pleadings theoretically could not be amended to reflect any wrong doing in the future? ! ? ! ? !

This is the ultimate, absolute and unconditional godfather pardon to the judicial corruption in Orange County.

III. CONTEMPT OF LAWFUL PROCESS BY COURT OF APPEAL JUSTICE

Justice W. Rylaarsdam WILLFUL NEGLECT of HIS JUDICIAL SERVICE -A CONTEMPT OF LAW [Code Civ. Proc. § 1209(a)(3)].

Justice W. Rylaarsdam STRETCH TO COVER UP INTERESTS OF BAR BUDDIES IN ORANGE COUNTY COURT IS SIN PROCESS OF THE COURT - A CONTEMPT [CODE CIV. PROC. § 1209(a)(6)].

HIS OPINION HAS TO REACH CALIFORNIA SUPREME

COURT AND COMMISSION ON JUDICIAL PERFORMANCE AND GOVERNOR SCHWARZENEGGER AS AN EXAMPLE OF INCOMPETENCE, PREJUDICE AND BAR SEGREGATION.

IV. JUSTICE W. RYLAARSDAM CONTEMPT OF LAW REGARDING VICIOUS REFUSAL BY DEFENDANT ATTORNEY TO RETURN BUSINESS FILES TO PLAINTIFF CLIENT

JUSTICE W. RYLAARSDAM COULD NOT SEE ANYTHING WRONG OR DAMAGING IF ATTORNEY DOES NOT RETURN FILES FOR MORE THAN 3 YEARS TO HIS CLIENT AFTER OBTAINING HIS SIGNATURE FOR SUBSTITUTION WITH DECEIT.

1. CALIFORNIA RULE OF COURT 3-700 (D)(1).

Papers, Property, and Fees. *A member whose employment has terminated shall:* ***promptly release to the client, at the request of the client, all the client papers and property.*** *"Client papers and property" includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other* ***items reasonably necessary to the client's representation, whether the client has paid for them or not;***

2/. SATEMENTS OF THE FACTS

On May 14th appointment instead to help needy client Attn T. Prescott confront him with stipulation for substitution of attorney and when he hesitates she condition it on exchange for file. After signatures Attn T. Prescott refuses to give file, N. Kolev insists, she orders her typist to call the police. Ap. Ax. Vol 1 Ex 8 at 168.

The file returned next day excludes completely Wells Fargo statements for $120,000 commingled account. tax return for opposing party, house purchase information.

All the letters and consecutive court filings are evidence when they are business record. *See Evid. Code §1271.*

3/. FRAUD AND DECEIT REGARDING WELLS FARGO ACCOUNT

THIS REFUSAL TO RETURN THE RECORD NOT ONLY ON May 15th, 2002, BUT FOR THE LAST THREE YEARS IN STATE BAR COVER-UP COMPLAINT. OC Superior Court Fraud and

Deceit case is A COMPLETION POINT IN REGARD TO THE STANDARD 5 ELEMENTS OF FRAUD AND DECEIT REGARDING WELLS FARGO ACCOUNT.

-(A). ***Actual misrepresentation)*** On 05/15/01 Respondent returned portion of monthly statements for WF accounts x-7310 and x-5112 If Attn T. Prescott possessed such statements for small accounts she had it for Portfolio x-5465 too ATTN T. PRESCOTT is responsible for evidence destruction/ N. Kolev approached Attn T. Prescott on 04/26/00 and hired her. The very first document turned to Attn T. Prescott first day was WF Statement. Attn T. Prescott took the case because of this account

N. Kolev valued this document because he believed the opposing side would conceal it and she did twice-in preliminary and final disclosure from 11/13/99 Ap. Ax. Vol 1 Ex 8 at Ex. 8 at 88, Ln 6. Wells Fargo answered [A A p.80] Ln 5 by producing monthly statements [A A p.80].

A statement of fact that is not true suggested by one who does not believe it to be true constitutes deceit [Civ. Code § 1710(1)], In other words, a material and knowingly false representation can support one of the elements of deceit see *Block v. Tobin* (1975) 45 Cal. App. 3d 214. 219. 119Cal- Rptr. 288], that to be true which he knew to be false, and is equally guilty of fraud [*Howell v- Courtesy Chevrolet. Inc*. (1971) 16 Cal. App. 3d 39L 402. 94 Cal. Rptr. 33).

-(B) Attn T. Prescott knowledge of statement's falsity). / In Court we had the bank records and also the insurance records to trace those funds[cite] [A A p.127] ¶ 3 bottom . According to Insurance conditions payments[A A p. 221] when Affiant discovered the account in January 2000 the account should have only $50,000, but actually had $120,000 without including the purchase of a new car by Affiant ex-wife[A A p. 137] Attn T. Prescott never litigated, never listed in full, refused to turn the monthly statements about these accounts to N. Kolev until present day because of statement falsity of no client interest. There is no other reason to keep records. Affiant had the records and she knew exactly how much money are commingled.

If the plaintiff has only a suspicion of fraud and the defendant lulls him into inaction by a false representation, the defendant will not be permitted to assert that the plaintiff lost his right to recover damages by accepting theassurance of the defendant that there was no fraud *[Brownlee v. Vang* (1965) 235 Cal- App. 2d 465. 474, 45 Cal. Rptr. 458],

The plaintiff also has the right to rely on defendant's superior knowledge if he lacks equal facilities for learning the truth[*Meyer v. Ford Motor Co.* (1969) 275 Cal. App. 2d [illegible], 105. 79 Cal. Rptr. 816].

-(C) Intent to defraud) / On November 28th, 2000 N. Kolev have sent Attn T. Prescott a fax [AA p.94], demanding to deliver this information to Judge Cannon. ATTN T.PRESCOTT produced a trial brief which never been filed anywhere, mentioned the account without a number and only for $96,000 instead of $120.000. This brief was produced only for N. Kolev consumption - to deceive N. Kolev, [AA p.108] , Ln 3 and it never been part of case record. Under N. Kolev pressure ATTN T.PRESCOTT requested Subpoena [AA p.79], Ln 9. in recognition of commingled account.

The same misrepresentation made to client-here made in deposition to OC Bar Association [AA p. 163] Attn T. Prescott knows these funds were commingled and they could be traced only if you look at all accounts, and distribution of expenses, at the same time. The records were in Attn T. Prescott possession, not in court or opposing party possession.

Reason to Expect Reliance by Plaintiff Sufficient. *In Geernaert v. Mitchell* (1995) 31 Cat. App. 4th 601, 37 Cal. Rptr. 2d 483. the plaintiffs, sued the former owners of home for fraudulent misrepresentation of foundation problems. to earlier purchasers, intended to be repeated to subsequent purchasers .

The defendants filed general demurrers - no statements to the plaintiffs made. The court of appeal reversed Judgment and noted that a defendant is not liable for actionable fraud unless intends a particular person to rely on misrepresentation. (31 Cal. App. 4th 601, 608).

-(D) Justifiable reliance to the last moment. The litigation of these accounts was requested by fax on 11/28/00, [A A pp.94, 99], on 05/09/01 [A A p.120], on 05/14/01, by mail 12/15/00, [A A p.112], ¶ 5, on 03/05/01 [AA p.115]; on 05/08/01 [A A p.119]; ¶ 2 bottom, on 05/12/01, ¶ 2. on 06/04/01, Ap. Ax. [AA p.137] Ln 1-8; on 06/24/01 [AA p.108] t ¶ 5; on 06/28/02 [AA p.179] ¶ 1; on 09/27/02 [AA p.193], ¶ 2 Bank statements are not public information.

Mere Failure to Investigate Does Not Bar Recovery. The fact that an investigation would have revealed the misrepresentation's falsity will not by Itself bar the plaintiffs recovery (*Seeger v. Odell* (1941) 18 Cal. 2d 409. 414-415. 115 P.2d 9771.

If there is a fiduciary relationship between plaintiff and defendant, the plaintiff has the right to rely on representations made to him without the duty of further inquiry *Davis v. Kahn* (1970) 7 Cal. App.

3d 868. 878, 86 Cal. Rptr. 872; see *Greenfield v. Insurance Inc.* (1971) 19 Cal. App. 3d 803. 811, 97 Cal. Rptr. 164 (insurance agent representing he had obtained coverage he had not obtained)].

-(E) Resulting damages) As a proximate result of defendant's fraud and deceit by nondisclosure of the aforesaid facts herein alleged Defendant did in fact mislead plaintiff to loose his part in $ 120,000 commingled account

This was insurance account used to shelter N. Kolev ex-spouse community property savings, her mom savings, working for 5 years illegally in USA. For the last 4.1/2 years before divorce, we have split accounts and we did not know how much savings each other had. Also the account has cha ed hands few times between Affiant ex-wife and her parents and it was questionable if it is inheritance anymore or a gift to the family.[AA pp 120-122].

Fraud, Breach of Fiduciary duty in disclosure of assets Fam C § 721 include an award to the aggrieved spouse of 50%, plus attorney fees and court costs, If the breaching party is guilty of oppression, fraud, or malice within the meaning of CC § 3294, the amount of the award is increased to 100% [Fam C § 1101(h)] So the interest in House and Account could be awarded 100% to N. Kolev.

Some court of appeal decisions have held that if there is fraud by a fiduciary, the out-of-pocket loss rule of (Civ. Code § 3343) does not apply. Instead, the much broader provisions of (Civ. Code §§ 1709, 3333) are applicable *Salahutdin v. Valley of California, Inc.* (1994) 24 Cal. App. 4th

One who willfully deceives another with Intent to induce him or her to alter his or her position to his or her Injury or risk is liable for any damages that he or she thereby suffers (Civ. Code § 1709).

4/. VIOLATION OF CALIFORNIA RULE OF COURT 3-700 (D)(1). VIOLATION OF CALIFORNIA RULE OF COURT 5-220 SUPRESSION OF EVIDENCE .

Client's right to work product Lasky. Haas. Cohler & Munter v. Superior Court (1985) 172 Cal.App.3d 264, 276-277 [218 Cal.Rptr. 205] Kallen v. Delug (1984) 157 Cal.App.3d 940. 950 [203 Cal.Rptr. 879] Weiss v. Marcus (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297] SD 1997-1

Lien to retain file against non-payment of attorneys fees void Academy of Calif. Opt. Inc. v. Superior Court (1975) 51 Cal.App.3d 999, 1006 [124 Cal. Rptr. 668] CAL 1994-134; SD 1997 1.;SD 1984-3. SD 1977-3;

Attorney to make file available on withdrawal SD 1997-1. SF

1996-1, SF 1990-1. SD 1984-3. SD 1977-3

Must release file to client after discharge Bernstein v. State Bar (1990) 50 Cal.3d 221 Rosenthal v. State Bar (1987) 43 Cal.3d 612 [238 Cal.Rptr. 394] Cal Pak Delivery. Inc. v. United Parcel Service (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207] Kallen v. Delug (1984) 157 Cal.App.3d 940. 950 [203 Cal.Rptr. 879] In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220In the Matter of Phillips (Review Dept. 2001) 4 Cal. State BarCt.Rptr.315 In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907 In the Matter of Sullivan. II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608 In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547 In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652 CAL 1994-134. SD 2001-1

Duty to return to client In the Matter of Bailey (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220 LA 405 (1982). LA 362 (1976), LA 253 (1958). LA 112 (1937). LA 103 (1937). LA(I) 1962-2 SD 1997-1. SD 1984-3, SD 1977-3 SF1984-1. SF 1975-4

Right to inspect and copy file while in possession of attorney LA 103 (1936), SD 1997-1. SD 1984-3. SF 1973-12

Client right on file materials LA 197 (1952). LA 103 (1937) SD 1997-1. SD 1984-3. SD 1977-3. SF 1979-3. SF 1975-4 Rose v. State Bar (1989) 49 Cal.3d 646. 654 [262 Cal.Rptr. 702] Rumac v. Bottomley (1983) 143 Cal.App.3d 810. 812 In. 3 [192 Cal.Rptr. 104] CAL 1994-134. CAL 1992-127. SF 1990-1

Willful failure to return cient files Bernstein v. State Bar (1990) 50 Cal.3d 221 [786 P.2d 352] In the Matter of Robins (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708

Failure to deliver file to client's new attorney as violation King v. State Bar (1990) 52 Cal.3d 307 (801 P.2d 419] Friedman v. State Bar (1990) 50 Cal.3d 235 [786 P.2d 359] In the Matter ofPhillips (Review Dept. 2001) 4 Cal. State Bar Ct.Rptr.315 In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547 In the Matter of Mvrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363 In the Matter of Lane (Review Dept 1994) 2 Cal. State Bar Ct. Rptr. 735 In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716 In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703

Demonstrated need for access to file can compel production and overcome privilege Kizer v. Sulnick (1988) 202 Cal.App.3d 431 [248 Cal.Rptr. 712]

5/. SOME LANDMARK ETHICS OPINIONS

SD 1970-3

There are three different theories on which Attorney A might conceivably base claims of ownership of files.

Theory No. 1: The Lien Theory. *In many jurisdictions, either as a result of the common law or because of a specific statute, lawyers are accorded liens on the papers and other property of their clients with the purpose of protecting the lawyer from exploitation by the client..*

For a discussion of the matter of liens see generally ***Wood, Fee Contracts of Lawyers, #99.*** *For a discussion of fees on substitution, see 3 ALR.2d 148.*

There is a further and more compelling reason. ***In California there is no general statute specifically granting such a lien***

Theory No. 2: The Confidentiality Theory. *There is substantial authority for the principle that communications between attorney and client in the course of professional service are to be treated as confidential. Drinker, Legal Ethics, p. 131$ C.C.P. 1881; C.E.C. §950 and B&P Code §6068(c). Also see Canon 17 of the 1908 Canons of the A.B.A. and Canon 4 of the 1969 Canons of Professional Responsibilities.*

But these rules are not presently relevant. They are for the benefit of the client not the attorney.

Theory No. 3: The Work Product Theory. *The adoption of the Federal Rules of Civil and Criminal Procedure heralded a significant change in the common law litigation process. Under the rules the policy became one of emphasis on "discovery" of facts. Among the few items which were held not to be subject to discovery was the "work product" of the lawyer. The leading federal case on the subject was Hickman v. Taylor, 67 S.Ct. 385 (1947). In*

The following quotations from ***Hickman v. Taylor*** *at* ***Pages 393-394*** *indicate the limits of the "work product" rule:*

"We do not mean to say that all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and nonprivileged facts remain hidden in an attorney's file and where production of these facts is essential to the preparation of one's case, discovery may be properly had ..."

This second statement is relevant. In the present case the two lawyers involved are not adversary counsel in the technical sense. Both are expected to be concerned with the best interests of the same client.

SD 1984-3 REGARDING CONDITIONAL, ABSOLUTE WORK PRODUCT

As a general principle, the Committee adopts the viewpoints espoused in this Committee's Opinion 1970-3, Los Angeles Bar Association Opinion 330 and San Francisco Bar Association Opinion 1975-4 insofar as those opinions conclude that all papers and property in the client's file, other than absolute attorney work product, should be delivered to the client upon withdrawal. Because the client is entitled to these documents and, in general, has already paid for them, the originals, or original copies, of such papers and property should be delivered to the client without charge. If the attorney desires to retain copies of such papers or property, any expenses incurred in producing such copies should be borne by the attorney.

. We concur with the language of Opinion 197 of the Los Angeles Bar Association:

"We are of the opinion . . . that an attorney should not govern his actions in this particular solely by what he may legally be compelled to do, but should, as a matter of professional ethics and good taste, allow his former client or succeeding counsel to inspect and make copies of the files or, if reasonable assurance be given that the papers would be returned to the attorney, the attorney should allow the former client or succeeding counsel to take the file for the purpose of having copies made if that be more convenient under the circumstances."

Consistent with this direction, the Committee expects that attorneys shall be guided in such matters by traditional standards of professional ethics and courtesy

SF-1990-1. AUTHORITIES SUPPORTING THE POSITION THAT THE CLIENT IS ENTITLED TO THE ATTORNEY'S UNCOMMUNICATED WORK PRODUCT

There is also a line of authority that supports the proposition that **an attorney's work product absolutely belongs to the client** when the client demands the attorney's file upon the attorney's discharge. Matull & Associates v. Cloutier (1987) 194 CalApp.3d 1049,1056; Kallen v. Delug (1984) 157 CalApp.3d 940, 950; Weiss v. Marcus (1975) 51 CalApp.3d 590, 599; Academy of California Optometrists, Inc. v. Superior Court (1975) 51 CalApp.3d 999, 1004-05.

These cases do not define attorney work product and do not address the assertion of the absolute work product protection in the discovery context. Instead, they concern the ethical duty of a discharged or

withdrawing attorney to provide the former client with the case file upon request so that new counsel could prepare the case for trial against the client's adversaries. The court in Weiss v. Marcus, supra, 51 CalApp.3d at 599, held that a client who discharges one lawyer and retains new counsel to consummate pending litigation "remains the owner" of the attorney's "work product" irrespective of whether the attorney was paid for his or her services.

In Kallen v. Delug, supra, the court found it to be a breach of the attorney's duty under former Rule 2-111(A)(2) for a discharged attorney to withdraw from employment until **he has taken reasonable steps to avoid foreseeable prejudice to the rights of his or her client,** including delivering to the client all papers and property "to which the client is entitled." Kallen v. Delug, supra. 157 Cal App.3d at 950.

The Academy of California Optometrists, Inc. v. Superior Court, supra, involved a dispute between a discharged attorney and a former client as to the enforceability of the attorney's contractually provided retaining lien on the client file for payment of the attorney's fees. Here again, the court referred to work product in the generic, non-privileged sense. No reference was made to the issue of the absolute work product privilege. **The court concluded that the attorney's lien on the file was unenforceable because of the attorney's duty under Rule 2-111(A)(2) to provide the client's file to the client.**

The Fourth Appellate District in Platt v. Superior Court, supra, concluded **that C.C.P. § 2018(c) was never intended to shield attorney work product from the lawyer's own client where the client sues the lawyer for legal malpractice.** The court reviewed the legislative history of Section 2018 and its predecessor, as well as the case authorities, commencing with **Hickman v. Taylor (1947) 329 U.S. 495,** and concluded that the **work product protection was intended to allow attorneys to represent their clients adequately and was not intended to be asserted against a client or former client in a legal malpractice action.**

Regarding the withheld file and Rule 5-220 Attorney charged with spoliation of evidence has burden of showing that his negligence did not result in loss of meritorious case **Galanek v. Wismar (1999) 68 Cal.App.4th [81 Cal.Rptr.2d 236]**

6. VIOLATION OF CALIFORNIA RULE OF COURT 3-700 (A). (2) ***A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due***

notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

Looking for the Prejudice to the client, when abandoned by his attorney, Attn Prescott did not do even the minimum of her obligations - to refer her client to a specialist - **Home v. Peckham (1979) 97 Cal.App.3d 404. 414 [158 Cal. Rptr. 714] Duty to refer client to a "specialist**

7. DUMPED CLIENT , DEPRIVED OF CRITICAL INFORMATION COULD NOT FIND ATTORNEY

On the top of Violation of Rule 3-700(d)(1) Attn T. Prescott cynically is claiming that the dumping of the client and ***defrauding him of his interest Bank Account $120,000, house in Irvine, unlawful child support, credit debt assigned to him only*** is not demonstrating *he suffered any damages of the substitution of attorney.* [R B p. 18]

I search for a new attorney Affiant realized: The new attorney would require retainer agreement money which Affiant did not have and would need a time to get familiar with the case. Particularly damaging were the missing WF statements depriving Affiant of critical information-**How much money are at stake?**

The Attorneys are highly trained and highly paid professionals and they would not take a case where the amount in **controversy is unknown** or could be relatively small for legal malpractice case. That made it impossible to find an attorney well documented efforts citing large number of Attorney refusal (Ap. Ax pp. 336-353).

In SF-1990-1 Ethical Opinion: The attorney's ethical obligations with respect to a client arise generally as a result of the employment relationship. The issues presented here contemplate that the attorney-client relationship has been terminated either by withdrawal, discharge or conclusion of the representation. **An attorney's obligations to the client do not cease with termination of the employment relationship. Kallen v. Delug (1984) 157 CalApp.Sd 940, 950**. Regardless of how or why the attorney-client relationship has terminated, **Rule 3-700(A) requires that a member shall not withdraw from employment until he or she has taken reasonable steps to avoid foreseeable prejudice to the rights of his or her client, including compliance with Rule 3-700(D) and other applicable laws and rules.** Thus, the attorney must turn over to the client or to the successor attorney all papers and property to which the client is entitled.

8. DUMPED CLIENT , DEPRIVED OF CRITICAL INFORMATION COULD NOT STAGE EXACT DAMAGE AMOUNT AS PART OF "CASE WITHIN-CASE" BETTER TRIAL OUTCOME.

In the Status Conference statement January 30th, 2003 N. Kolev requested as necessary pretrial condition to try the undivided WF bank account, community property house in Irvine, undivided credit card debt, unknown child support amount as "case-within-a case". Stating that the division of these undivided assets would have produced a better result in the underlying case if the attorney had conformed to the standard of practice. Lysick v. Walcom (1968) 258 Cal. App. 2d 136, 153, 65 Cal. Rptr. 406; BAJI No. 6.37.5: but see Sukoff v. Lemkin (1988) 202 Cal- App. 3d 740. 745 n.4. 249 Cal Rptr. 42 (burden of proof may shift when necessary evidence is unavailable because of defendant's alleged fraud).

Once the trial of **"case-within-a case"** establishes the fair division of property the court would find **the difference between its findings and the settlement agreement conditions as a measure of Attn.T.Prescott liability.**

The plaintiff stated in 6 counts the elements of duty, breach, proximate cause and damages in the fraud and deceit action against the attorney Budd v. Nixen (1971) 6 Cal. 3d 195, 200, 98 Cal. Rptr. 849, 491 P.2d 433.

To prove Attn. T. Prescott's fraud and deceit in the divorce division of property proximately caused damage to the N. Kolev, the plaintiff **must essentially retry the underlying undivided issues** to establish that he would have obtained a better result in the absence of the attorney's malpractice. Kessler v. Gray (1978) 77 Cal. App. 3d 284. 291, 143 CaL Rptr. 496. » Matico Forge. Inc. v. Arthur Young & Co. (1997) 52 Cal. App. 4th 820, 840, 60 Cal Rptr. 2d) 780 (accountant malpractice case) The evidence admissible in a trial of the "case-within-a-case" is the evidence that would have been admissible in the underlying action. Kessler v. Gray (1978) 77 Cal. App. 3d 284. 291, 143 Cal Rptr. 496.

If an attorney's conduct is alleged to be negligent, evidence that the court itself acted erroneously does not necessarily absolve the attorney of malpractice liability on the basis of superseding causation. To resolve the issue of causation on a malpractice claim, the proper inquiry is what a reasonable court should have done if the attorney had acted within the applicable standard of care not what a reasonable court faced with the attorney's actual conduct should have done. Lombardo v. Huysentruyt (2001) 91 Cal. App. 4th 656, 668-669. 110

Cal. Rptr. 2d 691

When the alleged malpractice here involves the failure to preserve evidence regarding bank accounts and tax return for year 2000. that was critical to the success of the underlying lawsuit, the burden should be shifted to the ""attorney defendant to prove that the negligence did not cause the malpractice plaintiff to lose a lawsuit that was otherwise meritorious.

This shifting of the burden is justified on the grounds that it is more appropriate to hold the attorney liable for failing to preserve critical evidence than to deny the malpractice plaintiffs claim, Galanek v. Wismar (1999) 68 Cal. App. 4th 1417. 1426-1427, 81 Cal. Rplr. 2d 236.

1/. "PRO SE" CHALLENGE OF UNCONSTITUTIONAL OPINION OF COURT OF APPEAL JUSTICE
(this section duplicates the Petition)

4/. IF A THEORETICAL CITUATION EXISTS, WHEN CHALLENGED JUDGE COULD KEEP RULING, BUT NOT IGNORING

According to CCP §170.4 (c)(1) If a statement of disqualification is filed after a trial or hearing has commenced by the start of voir dire, by the swearing of the first witness or by the ***submission of a motion for decision****, the judge whose impartiality has been questioned* ***may order the trial or hearing to continue, notwithstanding the filing of the statement of disqualification****. The issue of disqualification shall be referred to another judge for decision as provided in subdivision (a) of Section 170.3, and if it is determined that the judge is disqualified, all orders and rulings of the judge found to be disqualified made after the filing of the statement shall be vacated.*

The motion was timely, because the First Amended Complaint "Of course" was filed December 16th, 2002, when the process started all over again. For Law and Motion Judge, the lO-day/5-day rule applies. People v Superior Court (Levi) (1993) 4 C4lh 1164, 17 CR2d 815.

The written and signed statement to challenge Justice G. Lewis **was submitted on January 17th, 2003,** the Motion to Strike and Demurrer were submitted on January 29th, 2003. Even by **CCP §170.4 (c)(1) ignorance of Justice G. Lewis to Challenge for recusal could not be rescued.**

.....

V. ADDITIONAL VIOLATIONS NOT CONSIDERED AT ALL.

2. DATE OF SEPARATION ARGUABLE AGAINST CLIENT RIGHTS

a/. According to N. Kolev when the divorce papers where served to him - January 15th, 00.Ap.Ax. Vol 1 Ex 8 at 109 According to his wife - October 18th, 1999 when he left to visit his sick mother in Europe before she passed away. N. Kolev did not have any other residence until January 15th, 2000.

b/. The day of separation makes the debt either community or personal property. Only the debt as common necessities of life for either spouse or the minor children. **[Fam C $ 2623]** still community property until dissolution. Most of the debt was life necessity when N. Kolev was taking care of his mother and not working

c/. There was no litigation or explanation, no advise, no information, silent agreement with the conditions of the opposite side without informing her client resulting in $12,000 community property debt to be absorbed by the client, raising questions about the type of money spent in his oversea trip before separation-community property, or client's own;

3. YEAR 1999 TAX RETURN FOR THE OPPOSITE SIDE REFUSED IN VIOLATION OF CALIFORNIA RULE OF COURT 3-400 LIMITING LIABILITY OF A CLIENT

a/. That information could make $2,000 difference in N.Kolev IRS tax and was critical for child support calculation. Ap. Ax. Vol 1 Ex 8 at 119. The inspection of records is routine procedure in discovery and is mandated by **CCP §2131(c)** if the party objects motion to compel answer under **CCP §2131(l)**or imposing sanctions under **CCP §2131(m)** could follow up.

b/. ATTN T.PRESCOTT refused to make any inquires, failed to provide this information to the client regardless of his endless requests because it had ex Mother-in-Law listed as dependant when she was working illegally; as standard IRS ignores any request for such info even from State courts.

3. RETIREMENT BENEFITS IN EXCHANGE FOR NOTHING IN VIOLATION OF CALIFORNIA RULE OF COURT 3-400 LIMITING LIABILITY OF A CLIENT

Acting on her own, in the Property Agreement divides **client's PERS in exchange for Social Security Plan** (indivisible by law-separate property **[Re *Marriage of Hillerman* (1980, 4th Dist) 109 Cal App 3d 334, 167 Cal Rptr 240]** and University Retirement Plan

(not vested and withdrawn) against the client instructions;

Failure to research law Torbitt v. Fearn (1984) 161 Cal.App.3d 860. 864-865 [208 Cal.Rptr. 1]

4. ADDITIONAL CHILD SUPPORT ON TOP OF REGULAR CHILD SUPPORT IN VIOLATION OF CALIFORNIA RULE OF COURT 3-400 LIMITING LIABILITY OF A CLIENT

Additional child support according to Attn. T. Prescott shown in Ap.Ax. Vol 1 Ex 8 at p 153 *and for additional child support father should pay 1/2 of all child care expenses upon proof of cost by Mother* ,The law provision **Fam Code § 4062(a)** *court is required to include as additional support costs to employment, necessary training or reasonably necessary education for employment skills.* According to Attn T. Prescott every thing, to Law only for development. This provision-never litigated, never cleared, mentioned as unreadable abbreviation known only to Attn T.Prescott in the draft.

5. VIOLATION OF CALIFORNIA RULE OF COURT 3-510. COMMUNICATION OF SETTLEMENT OFFER

Property Division Agreement-ATTN T.PRESCOTT is the only writer of the draft. No preparation, no complete disclosure, no law and conditions conveyed . The preliminary draft suppose to fix immediate child needs-support and medical insurances. All the other issues subject to check up before court. After false promise to clean it up and print it before court she obtains signatures - no reading from the both sides and sticks in it provisions about retirement and additional child support.

That jeopardized preliminary conditions. **The Draft Agreement is neither settlement, neither fair division .** It is prepared hastily with abbreviations, crossings, corrections as a grocery list. Half of this 1 1/2 Hr when the Agreement is discussed for first and last time Attn T.Prescott leaves to attend the other simultaneously scheduled appearances in court.

If the client is held to terms agreed to by counsel without authorization, the client has recourse against the attorney for acting in excess of authority. [In re ***Marriage of Helsel*** (1988,4th Dist) 198 Cal App 3d 332, 243 Cal Rptr 657]. Marital settlement agreements, not **into** Judgment, are voidable due to **fraud, duress, undue influence,** or **mistake.** [CC §§ 1556 et seq.]; *see Re* ***Marriage of Gomale's*** (1976, 2nd Dist) *57* **Cal** App **3d** 736, 129 **Cal Rptr** 566, or **inequitable,** even in **the absence of fraud** or compulsion. *[Re* ***Marriage of Moore*** (1980,4th **Dist)** 113 Cal **App** 3d 22, 169 **Cal**

Rptr 619]

On May 14th appointment instead to help needy client Attn T.Prescott confront him with stipulation for substitution of attorney and when he hesitates she condition it on exchange for file. After signatures Attn T. Prescott refuses to give file, N. Kolev insists, she orders her typist to call the police. Ap. Ax. Vol 1 Ex 8 at 168.

Other simular cases failure to take action to set aside Moore v. State Bar (1964) 62 Cal.2d 74. 78 [41 Cal.Rptr. I161.396P.2d 577]I Hyland v. State Bar (1963) 59 Cal.2d 765. 772 [31 Cal.Rptr. 329, 382 P.2d 396] Cheleden v. State Bar (1942) 20 Cal.2d 133, 138 [124 P.2d 1]improperly obtaining settlement Grove v. State Bar (1965) 63 Cal.2d 312,314 [46 Cal.Rptr. 513. 405 P.2d 553] permitting settlement without client's authority In the Matter of Kauffman (Review Dept. 2001) 4 Cal. State BarCt.Rptr.213 Monroe v. State Bar (1961) 55 Cal.2d 145. 150 [10 Cal.Rptr. 257. 356 P.2d 529] Failure to advise client of spouse's community property Gorman v. Gorman (1979) 90 Cal.App.3d 454 [153 Cal.Rptr. 479] Failure to assert interest of wife in retirement benefits of husband in dissolution proceedings Smith v. Lewis (1975) 13 Cal.3d 349 [118 Cal.Rptr. 621. 530 P.2d 589] Failure to include husband's assets as community property Raudebaugh v. Young (1978) 87 Cal.App.3d 364 [150 Cal. Rptr. 848] Settlement offer LA 350 (1975). SD 1978-8 by client LA 375(1978). SF 1973-25 counsel fails to convey offer LA 350 (1975) written offer to client In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788

6. VIOLATION OF CALIFORNIA RULE OF COURT 4-100 PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT.

3-300 AVOIDING INTERESTS ADVERSE TO A CLIENT

6A. A HOUSE ON 15 GAINESMILL, IRVINE, CA 92620 OMITTED FROM AGREEMENT, NEVER CLEARED AS NOT COMMINGLED PROPERTY

a/. It was bought in with community funds after separation, but before dissolution, division of property(***Fiduciary duty between separation and dissolution as in Fam Code § 721(b) extends to the dissolution [Laux v Freed (1960) 53 Cal 2d 512, 2 Cal Rptr 265, 348 P2d 873]***-active resistance to the client request to clear the purchase funds-never litigated, never mentioned in any documents, no request for disclosure from the other side, surprisingly confusing statements about this property knowing Assessor's Office would list new property only after 6 to 12 months and N.Kolev could not check it

b/. ***Put the lien for $50,000 on the house to the finalizing of our divorce. I claim this house to be community property.*** Ap.Ax. Vol 1 Ex8 at at p. 111 ¶ 1. demand from plaintiff on 12/15/00 denied in appointment 02/01/01. *I have no information about a residence* ATTN T.PRESCOTT explanation.

c/. Fraud, Breach of Fiduciary duty in disclosure of assets Fam. Code § 721 include an award to the aggrieved spouse of 50%, plus attorney fees and court costs, If the breaching party is guilty of oppression, fraud, or malice within the meaning of **CC § 3294**, the amount of the award is increased to 100% **[Fam Code § 1101(h)]** So the interest in House and Account could be awarded 100% to N. Kolev.

6B/. VIOLATION OF CCP §284. SUBSTITUTION - CONSENT OR ORDER

According to CCP §284 Attorney may be changed at any time (1) Upon the consent of both client and attorney and (2) upon the order of the court, upon an application of client or attorney, after notice from one to another.

None of these conditions apply here. The only reason to sign the substitution of attorney was the fact Attn. Prescott obtained signature with false promise to return the file. It is not my word against his word. She submitted to OC Bar Association the depositions of her typist Mrs Shilo, Mrs Shilo clearly states the retun of the files was conditioned on substitution of Attorney [Ap.Ax.p. 168]

The affiant was mad at Attn. T. Prescott for damages and secrecy but he did not look to substitute her, because was more expensive, impossible without critical information retained by her. There was no notice to opposing party attorney, no substitute Attorney waiting, no motion to the court as required. In the form was marked ***the party is representing himself.*** The affiant did not tell her that. When she extorted the signature from her client the idea was to return the file immediately. She did not.

Obviously if Affiant knew she is deceiving him just like in the Agreement he would not sign the paper. Now let make it clear - **THERE ARE TWO DIFFERENT PROCEDURES FOR SUBSTITUTION OF ATTORNEY BY ATTORNEY AND FOR SUBSTITUTION OF ATTORNEY BY IN PRO SE LITIGANT.**

Also this case is demonstrating State Bar position on the issue: In the matter of Aguiluz(Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.32

Respondent was hired to represent the owners of a residential care home in a

*dispute with a state licensing agency. He filed a response to the agency's charges and secured two continuances of the administrative hearing, but then withdrew his appearance before the agency and abandoned his clients. Thereafter, **respondent denied to his clients that he had withdrawn as their counsel**, and **refused to give them their files until they paid him additional fees and signed a substitution of attorney form.** The hearing judge recommended that respondent be suspended for one year, stayed, with two years probation and restitution, but no actual suspension from practice. (Hon. Carlos E. Velarde, Hearing Judge.)*

Also this forced substitution could be considered as **refusal to continue or begin case Business and Professions Code Section 6128** LA 360 (1976). LA 356 (1976). LA 261 (1959), LA(I) 1967-9 SD 1978-7. SD 1973-3.

The above information is true and correct to the best knowledge of Affiant .

NICK A. KOLEV, In Pro Per
July 29, 2004

16. COMPLAINT TO STATE BAR PRESIDENT ABOUT MALPRACTICE COVER UP.

HONORABLE- ANTHONY CAPOZZY -PRESIDENT
STATE BAR OF CALIFORNIA
1233 West Shaw Ave., # 102 Fresno, CA 93711

HONORABLE ANTHONY CAPOZZY,

The reason to write this letter is my frustration with Chief Trial Counsel Intake Unit - Los Angeles Office. I could not even inquire what happened with my complaint file and who is working on it.

The procedure is not confidential, but secretive and abusive.

I did file twice against Attorney Tonya Prescott SB#123530, the second time just two weeks ago and twice my complaints were covered up.

A 44 page legal document with few hundred legal precedents and Ethics opinions cited is attached to a dead file. Why? Because the above named attorney was "smart enough" to hire for her legal malpractice case "HOLLINS&FIELDS", where Howard Hollins a former State Bar Judge and Settlement arbitrator allegedly used his influence to cover it up.

According to State Bar Act, if a LAY MAN like me files a frivolous complaint against his attorney he is guilty of misdemeanor. What is the guilt of SUPERVISOR Luis Castillos in Chief Trial Counsel Intake Unit to cover up an obvious corruption - may be felony. My understanding is *he is guilty of nothing*, because you are a CORRUPT ORGANIZATION, WHERE THE LAW, THE LEGAL PRINCIPLES, THE HONESTY DO NOT HAVE ANY VALUE.

YOU SPEND 80% OF YOUR BUDGET TO SHIELD THE MEMBER CORRUPTION FROM THE PUBLIC EYE, BUT VERY SOON EVEN 100% budget expenditures ARE NOT GOING TO BE ENOUOGH, BECAUSE IT IS CLEAR THERE ARE NO MORAL AND ETHICAL STANDARDS IN YOUR ORGANIZATION.

I need an answer from You - What are my options, but to file with State Bar Court for violation of Fair and Due process by

State Bar Chief Counsel Intake Unit? You THE SATE BAR suppose to be the Arm of California Supreme Court, but you are an Arm of the Italian Mafia, of Cosa Nostra, even your name is a good match for such a corrupt organization.

I need an answer from you WHY Prima Facie violations of Rules of Court 3-700 (D)(1)(BANK STATEMENTS, HOUSE PURCHASE, IRS TAXES ALL FILES STOLEN BY ATTORNEY) and 5-220(MITUAL ACCOMODATIONS WITH ATTORNEYS FROM OPPOSING PARTY), violation of State Bar Act §6068(b) MAKING MOCKERY OF LEGAL PROCESS BY HIRING COUNSEL WHERE THE SON OF JUDGE IS WORKING, HIRING THE LAW FIRM OF FORMER STATE BAR JUDGE AND ARBITRATOR, WHEN CLAIM FILED WITH STATE BAR do not even deserve the questioning of the fraudulent attorney. How the claim pointing about 10 violations of Business and Professions Code § 6068, the State Bar Act could be decided even without looking at it.

Why You lie to the Great People of California your operational Code is the State Bar Act when in practice you make A MOCKERY OUT OF IT.

I would send all materials of this case to State Committee on Rules, Judicial Committees with State Senate and State Assembly.

I am lobbing the MEDIA with all possible and impossible means to publish these materials - a 50 billion dollar Legal Industry is based on back door connections, who is sleeping with whom, ethnicity, mutual accommodations, lawfulness of their own organization.

GOD BLESSES AMERICA IN ITS EFFORTS TO CONTAIN CORRUPTION IN STOCK MARKET, IN CATHOLIC CHURCH, IN GOVERNMENT BY AN ARMY OF 197,000 CORRUPT ATTORNEYS IN CALIFORNIA ALONE.

Sincerely:

Nick A. Kolev, PhD P.E. August 08, 2004

17. LETTERS TO PRESIDING, SUPERVISING JUDGES OC SUPERIOR COURT

HONORABLE FREDERICK P. HORN
PRESIDING JUDGE, OC SUPERIOR COURT

HONORABLE J. WATSON
SUPERVISING JUDGE, OC SUPERIOR COURT

YOUR HONOR,

This Soap Opera Took Place In Your Court.

I Am Submitting The Materials To Commission On Judicial Performance And Commission On Judicial Appointments, State Bar As An Example Of Destruction Of Fair And Due Process, Of Corruption And Total Failure Of Judicial Ethics And Rules Of Court From Attorney Through The Court Of Appeal And Up To Supreme Court(Please, Look At P. 38 And Further)

Also I Am Sending This Materials To Federal And State Representatives.

Respectfully: Nick A. Kolev /PhD/

18. COVER LETTER OF PETTITION FOR REHEARING SEND TO GOVERNOR AND ELECTED OFFICIALS

Dear Sir, or Madam,

Judicial Corruption **in Southern California is like the** Air Pollution. **You** never get ride of it, **but try to keep it under** decent level.

This is a Soap Opera, where a LAY MAN, misspelling and misspeaking English dare to challenge **his Attorney in Family Law , after that, a Judge in Orange County Court and now a Justice in OC Court of Appeal flatly saying:**

You corrupt the Law, you trespass the Constitution regarding Fair and Due process. And you rule based on back door connections, phone calls, professional and ethnic affiliations, relatives-evidence more than needed.

But it is a LAY MAN assumption to believe the Court would rule according to the Law. Appeal Justice does not say *according to the Law,* but *My Legal Opinion is.* So, the opinion could be based on law(should be), on phone calls, on back door connections, on ethnicity, on bribes.

Some may find this message to be a slander, or libel to powerful people. **After reading 50,000 pages of legal materials, writing 600 pages of Legal pleadings, I don't believe labeling perpetrators of corruption "corrupt" is in conflict with their standing to the law.**

If you are not interested to read about corruption and soul pollution, read it as the funniest and most challenging **Legal *Brief (according to Guinness book of Records)* ever filed with California Supreme Court.**

Respectfully: Nick A. Kolev

19. JUDGE G. LEWIS ORDER OF DISMISSAL PRODUCED AROUND APRIL 20TH,2003 WITH BACK DATE OF APRIL 1ST,2003 TO AVOID CHALLENGE

Byron S. Hollins, SB#113423
Laura M.Levy, #216054
HOLLINS & FIELDS LLP
23801 Calabasas Road, Suite 100
Calabasas CA 91302-1597
Te(: 818-223-0300
Fax: 818-223-0310
Attorneys for Defendant
Tonya E. Prescott and Prescott & Prescott

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 01 2003

ALAN SLATER, Clerk of the Court
/Signature/
BY C. RAMOS

SUPERIOR COURT CALIFORNIA, COUNTY OF ORANGE
CENTRAL JUSTICE CENTER-700 CIVIC CENTER DRIVE WEST

NICK A. KOLEV,
Plaintiff,
vs.
TONYA M. PRESCOTT. ESQ. SB#123530,
Defendant

Case No.: 02CC06912
Assigned to Hon. Gregory H. Lewis, Dept. C-22
Complaind filed:May 13, 2002

~~[PROPOSED]~~ ORDER OF DISMISSAL

On March 4.2003, the court issued the following tentative ruling regarding defendants Tony E. Prescott and Prescott & Prescott's demurrer to the first amended complaint, set for hearing on March 5, 2003, at 8:30 a.m. in department C-22, of the above entitled court:

> "Plaintiffs complaint is filled with many conclusory, speculative and emotional allegations, but it does not contain the specific factual allegations necessary to state a cause of action against MP. As to the various fraud causes of action: Fraud must be plead with specificity. *Committee on Children's Television.* Plts wild and conclusory allegations lack the specificity required. Plt does not plead to whom the representations were made, when they were made, by whom,

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COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
MAR 27 2003

and further does not provide facts supporting reasonable reliance. As to legal malpractice cause of action: Plt does not plead that his wife would have settled for less. *Marshak.* As to the IIED cause of action: Plt does not plead facts which would constitute outrageous conduct, or reckless disregard. *Cervantes.* There is no opposition to indicate that plt can plead the necessary elements. **The Demurrer is sustained without leave to amend."**

Plaintiff did not oppose the demurrer nor did he request oral argument. Accordingly, the tentative ruling is the order of this court.

IT IS HEREBY ORDERED. ADJUDGED AND DECREED that the entire action is dismissed, in its entirety, with prejudice.

Costs in the sum of $_____ are awarded to defendants Tonya E. Prescott and Prescott & Prescott and against plaintiff Nick Kolev.

APR 01 2003

Dated: ~~March~~ _____ 2003

/Signature/
Gregory/H. Lewis
Judge of the Superior Court